

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE NEW YORK CITY DISTRICT COUNCIL OF
CARPENTERS PENSION FUND, NEW YORK CITY
DISTRICT COUNCIL OF CARPENTERS WELFARE
FUND, NEW YORK CITY DISTRICT COUNCIL OF
CARPENTERS VACATION FUND, NEW YORK
CITY DISTRICT COUNCIL OF CARPENTERS
ANNUITY FUND, NEW YORK CITY DISTRICT
COUNCIL OF CARPENTERS APPRENTICESHIP,
JOURNEYMAN RESTRAINING, EDUCATIONAL
AND INDUSTRY FUND, NEW YORK CITY
DISTRICT COUNCIL OF CARPENTERS CHARITY
FUND, and THE NEW YORK CITY AND VICINITY
CARPENTERS LABOR-MANAGEMENT
CORPORATION, By MICHAEL J. FORDE and
PAUL O'BRIEN, as TRUSTEES, and MICHAEL J.
FORDE AS EXECUTIVE SECRETARY-TREASURER,
DISTRICT COUNCIL FOR NEW YORK CITY AND
VICINITY, UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA,

**NOTICE OF MOTION
TO VACATE
ARBITRATION AWARD**

File No. 08 CIV 3748

Assigned to
Judge Alvin K. Hellerstein

Plaintiffs,

-against-

THREE GUYS FLOOR COVERING WORKROOM, INC.,

Defendant.

----- X

SIR:

PLEASE TAKE NOTICE, that upon the annexed Memorandum of Law of
ROBERT N. COHEN, ESQ., one of defendant's attorneys, duly sworn to the 1st day of
May, 2008, the supporting Affidavits of SALVATORE PICCARILLO and ROBERT

GONZALEZ, both duly sworn to the 1st day of May, 2008, with exhibits annexed and upon all the pleadings and proceedings heretofore had herein, defendant, THREE GUYS FLOOR COVERING WORKROOM, INC., will move this Court before the Honorable Alvin Hellerstein, in Courtroom 14D of the Federal Courthouse located at 500 Pearl Street, New York, New York 10007, on the 23rd day of May, 2008, at 9:30 o'clock A.M. in the forenoon of that day or as soon thereafter as counsel can be heard for an Order vacating the Arbitration Award of Robert Herzog, Esq. in this matter, dated February 4, 2008, on the grounds that said Arbitrator manifestly disregarded the law and facts herein and that the Award does not draw its essence from the Collective Bargaining Agreement dated July 1, 2001, and if such award is vacated, dismissing plaintiff's Complaint.

PLEASE TAKE FURTHER NOTICE that answering affidavits, if any, are required to be served within four (4) business days of service of said Affidavit, pursuant to Local Rule §6.1.

Dated: Garden City, New York
April 30, 2008

WEINSTEIN, KAPLAN & COHEN, P.C.
Attorney for Defendant

By: 

ROBERT N. COHEN (RC8274)
1325 Franklin Avenue
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Garden City, New York 11530
(516) 877-2525

TO: O'DWYER & BERNSTIEN, LLP
ATTENTION: ANDREW GRABOIS, ESQ. (AG3192)
Attorneys for Plaintiffs
52 Duane Street
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(212) 571-7100

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1. Notice of Motion to Vacate Arbitration Award
2. Memorandum of Law in Support of Motion to Vacate Arbitration Award
3. Affidavit of Salvatore Piccarillo

4. Affidavit of Robert Gonzalez
5. Exhibit A - Opinion and Award
6. Exhibit B - Summons and Complaint
7. Exhibit C - Answer and Counterclaim
8. Exhibit D - Collective Bargaining Agreement
9. Exhibit E - Respondent's Memorandum of Law in Support of its Application to Dismiss the Arbitration
10. Exhibit F - Member-Employer Addendum
11. Exhibit G - Letters dated August 24, 2006 and August 6, 2007
12. Exhibit H - Audits for the periods 1/1/00 through 6/30/01 and 7/1/01 through 6/30/02

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SOUTHERN DISTRICT OF NEW YORK

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Assigned to
Judge Alvin K. Hellerstein

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THREE GUYS FLOOR COVERING WORKROOM, INC.,

Defendant.

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**DEFENDANT'S MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO VACATE ARBITRATION AWARD**

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PRELIMINARY STATEMENT

Defendant's Memorandum of Law is submitted in support of its motion to vacate the Arbitration Award in this matter by Arbitrator Robert Herzog, Esq. dated February 4, 2008 (annexed hereto and made a part hereof and marked Exhibit "A" is a copy of the Arbitration Award) upon the grounds that the Arbitrator manifestly disregarded the law and facts in this matter and issued an award that was contrary to the essence of the Collective Bargaining Agreement (hereinafter referred to as "CBA") dated July 1, 2001. The instant action was commenced by the above-captioned plaintiff on or about April 21, 2008 by the filing of a Summons and Complaint seeking a Judgment of this Court confirming the Arbitration Award issued in favor of the plaintiff by Arbitrator Robert Herzog, Esq. dated February 4, 2008. (Annexed hereto and made a part hereof and marked Exhibit "B" is a copy of the Summons and Complaint herein.)

On or about May 1, 2008, simultaneously with the service of this motion, defendant interposed an Answer including Affirmative Defenses, and two (2) Counterclaims to vacate the Arbitration Award herein. (Annexed hereto and made a part hereof and marked as Exhibit "C" is a copy of the Answer including Affirmative Defenses and Counterclaims.)

It is the defendant's contention herein that the Arbitration Award issued on February 4, 2008 should be vacated by this Court upon the grounds that the Arbitrator "manifestly disregarded the law and facts in this matter" and that his award "does not reflect the essence of the CBA" and should be vacated. (Annexed hereto and made a part hereof and

marked as Exhibit "D" is a copy of the Collective Bargaining Agreement dated July 1, 2001.)

STATEMENT OF FACTS

Defendant, THREE GUYS FLOOR COVERING WORKROOM, INC. (hereinafter referred to as "THREE GUYS") is a floor covering contractor which was a signatory to a CBA which covered the period July 1, 2001 through June 30, 2006.

On or about May 17, 2007, the New York District Council of Carpenters Benefits Funds (hereinafter referred to as the "Fund" and/or plaintiff) served two (2) Notices of Intention to Arbitrate alleging that the Fund was entitled to delinquent fringe benefit contributions for the period July 1, 2002 through November 11, 2004 in the sum of \$100,038.22 and for the period November 12, 2004 through July 6, 2006 in the sum of \$65,079.86. Thereafter, on or about August 20, 2007, the Fund amended its final audit report to seek \$25,722.79 for the period July 1, 2002 through November 11, 2004 and \$14,238.52 for the period November 12, 2004 through July 7, 2006.

Then, on or about October 18, 2007, the Fund, once again, amended its final "Audit Report" now seeking \$90,829.14 for the period July 1, 2002 through November 11, 2004 and \$58,150.99 for the period November 11, 2004 through July 7, 2006.

It is undisputed that the parties were bound by the CBA entitled the "Independent Resilient Floor Coverers Agreement" between defendant and the Fund. The Agreement covered the period July 1, 2001 through June 30, 2006. (See Exhibit "D") The Fund

alleges that the defendant failed to make sufficient benefit contributions to the Fund for the period of July 1, 2002 through November 11, 2004 and November 12, 2004 through July 6, 2006 as required by the CBA. The Fund claimed that the two (2) principals of defendant, Salvatore Piccarello and Robert Gonzales, were required to contribute benefit payments based upon a minimum of twenty-eight (28) hours per week.

The Arbitration took place on October 2, 2007 and December 10, 2007 at the offices of the Fund. Prior to the conclusion of the Arbitration proceeding, Respondents submitted a Memorandum of Law in support of its application to dismiss the Arbitration based upon the facts presented at the Arbitration Hearing. (Annexed hereto and made a part hereof and marked Exhibit "E" is a copy of defendant's Memorandum of Law in Support of its Application to Dismiss the Arbitration.)

On or about February 4, 2008, Arbitrator Robert Herzog, Esq. issued an Opinion and Award finding that defendant was delinquent in its fringe benefits payment due and owing to the Fund under the CBA and awarding the Fund a total of \$60,197.15 with interest to accrue at a rate of ten (10%) percent from the date of the award. (See Exhibit "A")

POINT I

THE ARBITRATOR'S AWARD MANIFESTLY DISREGARDED THE LAW AND FACTS IN THIS MATTER

The position taken by the Fund at the Arbitration was that Salvatore Piccarello and Robert Gonzalez, as principals of THREE GUYS, were required to make contributions to

the Fund for a minimum of twenty-eight (28) hours of work per week whether or not they actually worked those hours or not. In support of this position, the Fund submitted in evidence two (2) Member-Employer Addendums, each providing that pursuant to the CBA which predated the July 1, 2001 CBA in issue (the March 10, 1993 CBA), reflecting that Salvatore Piccarello and Robert Gonzales, as Officers and Directors of defendant, agreed that they would be deemed employees within the terms of the CBA in order to qualify for fringe benefits funds, and would pay weekly contributions of a minimum of twenty-eight (28) hours per week to the Fund. (Annexed hereto and made a part hereof and marked Exhibit "F" are copies of the March 10, 1993 Member-Employer Addendums.) However, these Member-Employer Addendums solely applied to the CBA dated March 10, 1993 and not to the CBA at issue which covered the period between July 1, 2001 and July 30, 2006. (See Exhibit "D") The Fund has admitted that no Member-Employer Addendum was signed by Salvatore Piccarello or Robert Gonzales for the July 1, 2001 CBA. Additionally, a review of the CBA in issue reveals that there is no language in that Agreement requiring a minimum of twenty-eight (28) hours per week of contributions to the Fund by the principals of the employer signatories. (See Exhibit "D")

Indeed, in two (2) letters sent to its Contributing Employers, one dated August 24, 2006 and the other dated August 6, 2007, the Fund indicated that its policy regarding benefit contributions for principals, effective September 1, 2006, was that principals (owners) who are Union Members and had executed a Member-Employer Participation

Agreement with Funds would now be required to contribute a minimum of twenty-eight (28) hours per week in benefits in order to be eligible to participate in the Benefits Funds. (Annexed hereto and made a part hereof and marked Exhibit "G" is a copy of said letters from the Fund dated August 24, 2006 and August 6, 2007.)

Deponent made the argument to the Arbitrator that reasonable contract interpretation based on the documents presented in this Arbitration clearly revealed that (a) the Member-Employer Addendums signed relating to the March 10, 1993 CBA applied only to that Agreement since a new CBA was executed on or about July 1, 2001; (b) that no Member-Employer Addendum was signed by Salvatore Piccarello or Robert Gonzalez in connection with the July 1, 2001 CBA; and (c) that the Fund, in writing and by its own admission, did not institute the minimum required twenty-eight (28) hours per week contribution until an effective date of September 1, 2006, sixty (60) days after the expiration of the July 1, 2001 CBA.

Additionally, the Fund had conducted audits of the defendant for the period January 1, 2000 through June 30, 2001, and then from July 1, 2001 through June 30, 2002 which audits revealed that there was no requirement for the twenty-eight (28) hour minimum contribution and that negligible arrears were due from defendant. (Annexed hereto and made a part hereof and marked Exhibit "H" is a copy of said Audits from the Fund for the period January 1, 2000 through June 30, 2001 and July 1, 2001 through June 30, 2001.)

New York contract law is clear that when parties to a contract enter into a

subsequent agreement, there is a presumption that the prior agreement has terminated and the specific terms of the prior agreement are, therefore, no longer binding on the parties. (See e.g., Sutherland v. Connecticut Mut. L. Ins. Co., 87 Misc. 383, 149 N.Y.S. 1008 (Sup. Ct. 1914) (*Held: The terms of a subsequent agreement by the parties will not be strewn together with the terms of the former agreements as one continuing agreement, but rather, by the creation of the new agreement, all other agreements are deemed terminated unless explicitly stated in the new agreement.*)

As a general rule, the terms of each independent agreement are to remain “separate unless the history and the subject matter show them to be unified.” National Union Fire Ins. Co. of Pittsburgh, PA v. Williams, 223 App. Div.2d 395, 396, 637 N.Y.S.2d 36 (1st Dept. 1996) (*Held: Promissory note and indemnification agreement executed contemporaneously between investor and insurer were separate instruments and could not be read together to establish jurisdiction in the selected form.*) Thus, the terms of a prior agreement may only be resurrected as part of the subsequent agreement where there is explicit reference thereto in the subsequent agreement or where the party seeking enforcement of the former terms in the subsequent agreement produces conclusive, admissible evidence of defendant’s intent to be bound by the terms of the prior agreement. (See Sutherland, supra, 87 Misc. at 386)

Where the parties have entered into multiple agreements, the terms of those agreements are to be read separate and apart from one another, and, under no interpretation

of contract law can it be said that entering into a subsequent contract resulted in the *automatic* renewal of or accession to the terms of an earlier agreement. (See Sutherland, supra)

There is no language in the July 1, 2001 CBA incorporating the terms of the prior CBA dated March 10, 1993. (See Exhibit "D") The Arbitrator had knowledge of the fact that the July 1, 2001 CBA had no language requiring a minimum of twenty-eight (28) hours per week contribution for principals of an employer and was also fully aware of the August 24, 2006 and August 6, 2007 letters from the Fund advising the Contributing Employers that the twenty-eight (28) hour minimum requirement would become effective on or after September 1, 2006. (See Exhibit "F") It is only reasonable to assume that if the effective date of the twenty-eight (28) hour minimum contribution was September 1, 2006, that prior to that time no twenty-eight (28) minimum hour contribution existed or was mandated by the CBA. Clearly, during a period during the term of the previous CBA (January 1, 2000 through June 30, 2001), an audit was done by the Fund's auditors which revealed no requirement (See Exhibit "H") that the defendant contribute the minimum twenty-eight (28) hours per principal. Despite acknowledging the above facts and even quoting sections of deponent's Memorandum in Support of its Application to Dismiss the Arbitration (See Exhibit "E"), the Arbitrator determined that because the Employers (Piccarello and Gonzales) had signed the March 10, 1993 Member-Employer Addendum, that they "impliedly agreed" to be bound in perpetuity by this Addendum during the

duration of “subsequent collective bargain agreements.”

An arbitration award may be vacated if it is rendered in “manifest disregard of the law.” Wien & Malkin, LLP v. Helmsley-Spear, Inc., 6 N.Y.3d 471 (2006); Halligan v. Piper Jaffrey, Inc., 148 F.3d 197 (2nd Cir. 1998) “Manifest disregard of law” however, is a severely limited doctrine applied only in extremely rare situations and courts are highly deferential to arbitration awards. Porzig v. Dresner, Kleinwort, Benson, North America, LLC, 497 F.3d 133 (2nd Cir. 2007) The petitioner has a heavy burden and the arbitration award may be vacated only where the petitioner can demonstrate both that: (1) the arbitrator knew of a governing legal principle, yet refused to apply it or ignored it all together and (2) that the law ignored by the arbitrator was well defined, explicit and clearly applicable to the case. Wallace v. Buttar, 378 F.3d 182 (2nd Cir. 2004) It is best described as a “doctrine of last resort” where some egregious impropriety on the part of the arbitrator is apparent. Duferco Int’l Steel Trading v. T. Klaveness Shipping A/S, 333 F.3d 383 (2nd Cir. 2003)

In the instant matter, the Arbitrator was well aware that there was no contractual obligation under the July 1, 2001 CBA to hold the defendant liable for benefit contribution arrears under the minimum twenty-eight (28) hour rule. He was also provided with the documentation that the twenty-eight (28) hour rule became effective September 1, 2006, sixty (60) days after the expiration of the subject CBA. His argument that the defendant “impliedly consented in perpetuity” to paying the twenty-eight (28) hour minimum is irrational and unsupported by black letter contract law. Indeed, Courts have held that in

order for the doctrine of implied consent to apply, it must be definitively shown that the individual must have actual knowledge and must expressly consent to the obligations under a contract. Backstatter v. Berry Hill Building Corp., 56 Misc.2d 351, 288 N.Y.S.2d 850 (Sup. Ct. 1968) No such consent may be implied here since the evidence reflects that the Fund did not charge a minimum of twenty-eight (28) hours per principal during the 2000/2001 audit and as reflected by the August 24, 2006 and August 6, 2007 letters from the Fund, the effective date of the twenty-eight (28) hour rule was September 1, 2006, and no earlier. Additionally, there is certainly no language, either in the CBA or the Member-Employer Addendums, which permits the Arbitrator to determine that the employers “impliedly consented to be bound in perpetuity” during the duration of subsequent Collective Bargaining Agreements to the terms contained therein. The Arbitrator fails to even mention the August 24, 2006 and August 6, 2007 letters in his Award. It is respectfully submitted that these letters confirm that the Fund only enacted the twenty-eight (28) hour rule on September 1, 2006, and not before. This is fatal to the Fund’s case. This single determination by the Arbitrator, with full knowledge of the facts and the law in this matter is a classic example of manifest disregard of both the facts and the law.

POINT II

THE VACATUR OF THE ARBITRATION AWARD IS JUSTIFIED UNDER THE “ESSENCE OF THE AGREEMENT” DOCTRINE

The “Essence of the Agreement” Doctrine had its origin in the case of United Steel Workers of America v. Enterprise Wheel and Car Corp., 363 U.S. 593, 80 S.Ct. 1358

(1960). In United Steel Workers of America, 363 U.S. at 597, supra, Justice William Douglas stated as follows:

“Nevertheless, an Arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator’s words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award.”

Under the Court’s heightened standard of deference, vacatur for manifest disregard of a commercial contract is appropriate if the arbitral award contradicts an express and unambiguous term of the contract or if the award so far departs from the terms of the agreement that it is not even arguably derived from the contract. Westerbeke Corporation v. Daihatsu Motor Co., Ltd., 304 F.3d 200, 222 (2002) See also Harry Hoffman Printing, Inc. v. Graphic Communications, Int’l Union, 950 F.2d 95, 98 (2nd Cir. 1991) (vacating award under “essence of the agreement” doctrine where arbitrator drew on notions of “due process” rather than on terms of contract); In re Marine Pollution Serv., Inc. 857 F.2d 91, 95 (2nd Cir. 1988) (vacating award under “essence of the agreement” doctrine that went against express terms of the contract and was based instead on considerations of equity.)

In this matter, the Arbitrator has not provided even a barely colorable justification for his interpretation of the contract, and despite being clearly advised of the undisputed facts and unquestioned law of New York, he issued a decision violating the “essence of the collective bargaining agreement.” There is no rational justification for t his Arbitrator’s

decision in the face of all the facts presented and the existing law.

CONCLUSION

Defendant respectfully submits that the Court, under either the “manifest disregard of law and facts” or “essence of the agreement” doctrines should vacate the Arbitrator’s Award herein since the Arbitrator has not provided a barely colorable justification for his interpretation of the contract, despite the fact that the Arbitrator was made aware of the governing principles of law and appreciated that those principles which control the outcome of the disputed issues, but nonetheless willfully flouted the governing law by refusing to apply it. The Court should vacate the Arbitrator’s Award, grant defendant’s counterclaim, and dismiss the plaintiff’s complaint herein in all respects.

WHEREFORE, defendant respectfully requests that plaintiff’s complaint be dismissed in its entirety, that this motion be granted and that the Arbitrator’s Award be vacated, plus such other and further relief as may be just proper and equitable.

Dated: Garden City, New York
May 1, 2008

Yours, etc.

WEINSTEIN, KAPLAN & COHEN, P.C.
Attorneys for Defendant

By: 

ROBERT N. COHEN (RC8274)

1325 Franklin Avenue
Suite 210
Garden City, New York 11530
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TO: O'DWYER & BERNSTIEN, LLP
ATTENTION: ANDREW GRABOIS, ESQ. (AG3192)
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Defendant.

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STATE OF NEW YORK)

SS.:

COUNTY OF NASSAU)

SALVATORE PICCARILLO, being duly sworn, deposes and says:

1. Deponent is the President of THREE GUYS FLOOR COVERING
WORKMAN, INC. (hereinafter referred to as "THREE GUYS"), defendant in the above-

captioned matter, and makes this Affidavit in Support of defendant's Motion to Vacate the Arbitration Award issued on February 4, 2008 by Arbitrator Robert Herzog, Esq.

2. Deponent is a fifty percent (50%) shareholder in defendant's corporation.

3. THREE GUYS is a floor covering contractor located in the City of New York.

4. On or about March 10, 1993, deponent, as President of THREE GUYS, signed a Member-Employer Addendum, which document is annexed as Exhibit "F" hereto and which Addendum was related to a Collective Bargaining Agreement signed on March 10, 1993 between the plaintiff, NEW YORK CITY DISTRICT COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, and defendant, THREE GUYS.

5. A new Collective Bargaining Agreement was signed by the undersigned on or about July 1, 2001. (See Exhibit "D" annexed hereto.) Deponent did not sign an additional Member-Employer Addendum to the July 1, 2001 Agreement.

6. There is no mention of a minimum amount of hours per week to be allocated to principals of an employer under the Collective Bargaining Agreement in the 2001 CBA.

7. That the plaintiff conducted audits for the period 1/1/00 through 6/30/01 and 7/1/01 through 6/30/02, and despite the fact that deponent and his co-shareholder, ROBERT GONZALEZ, the two (2) principals of THREE GUYS, each did not pay benefit charges for a total of twenty-eight (28) hours each week for benefits, the audit reflected that negligible monies were due for the aforesaid period under the previous CBA (which time period was covered by the Member-Employee Addendum dated March 10, 1993) and

CBA in issue. (See Exhibit "H" annexed hereto.)

8. That deponent received two (2) letters from the plaintiff which have been marked as Exhibit "G" annexed hereto, which stated that the minimum requirement of reporting twenty-eight (28) hours per week for principals of any employer who was a signatory under the CBA would be effective on or after September 1, 2006, sixty (60) days after the expiration of the subject CBA herein.

9. That all of the above information was presented to the Arbitrator in this matter, Robert Herzog, Esq., either by way of testimony or by exhibits, at the Arbitration Hearings held on October 2, 2007 and December 10, 2007.

10. That there is no provision in the CBA dated July 1, 2001 which incorporates the prior provisions of any CBA previously executed by the parties.

11. That despite the ruling of the Arbitrator regarding any implied consent on behalf of the deponent, deponent never agreed, directly or indirectly, orally or in writing, to be bound by the March 10, 1993 Addendum, in perpetuity. That Addendum only related to the CBA dated March 10, 1993, and to no other CBA. The first time deponent was advised that the Fund claimed it was due any money under the CBA was after the August 24, 2006 letter. (See Exhibit "G" annexed hereto.)

WHEREFORE, deponent respectfully requests that defendant's motion be in all respects granted.


SALVATORE PICCARILLO

Sworn to before me this
1st day of May, 2008.


NOTARY PUBLIC

ROBERT N. COHEN
Notary Public, State of New York
No. 30-4701212
Qualified in Nassau County
Commission Expires July 31, 2009

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AFFIDAVIT IN SUPPORT

File No. 08 CIV 3748

Assigned to
Judge Alvin K. Hellerstein

Plaintiffs,

-against-

THREE GUYS FLOOR COVERING WORKROOM, INC.,

Defendant.

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STATE OF NEW YORK)

SS.:

COUNTY OF NASSAU)

ROBERT GONZALEZ, being duly sworn, deposes and says:

1. Deponent is the Vice President and Secretary of THREE GUYS FLOOR
COVERING WORKMAN, INC. (hereinafter referred to as "THREE GUYS"), defendant
in the above-captioned matter, and makes this Affidavit in Support of defendant's Motion

to Vacate the Arbitration Award issued on February 4, 2008 by Arbitrator Robert Herzog, Esq.

2. Deponent is a fifty percent (50%) shareholder in defendant's corporation.

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5. A new Collective Bargaining Agreement was signed by the undersigned on or about July 1, 2001. (See Exhibit "D" annexed hereto.) Deponent did not sign an additional Member-Employer Addendum to the July 1, 2001 Agreement.

6. There is no mention of a minimum amount of hours per week to be allocated to principals of an employer under the Collective Bargaining Agreement in the 2001 CBA.

7. That the plaintiff conducted audits for the period 1/1/00 through 6/30/01 and 7/1/01 through 6/30/02, and despite the fact that deponent and his co-shareholder, SALVATORE PICCARILLO, the two (2) principals of THREE GUYS, each did not pay benefit charges for a total of twenty-eight (28) hours each week for benefits, the audit reflected that negligible monies were due for the aforesaid period under the previous CBA (which time period was covered by the Member-Employee Addendum dated March 10,

1993) and the CBA in issue. (See Exhibit "H" annexed hereto.)

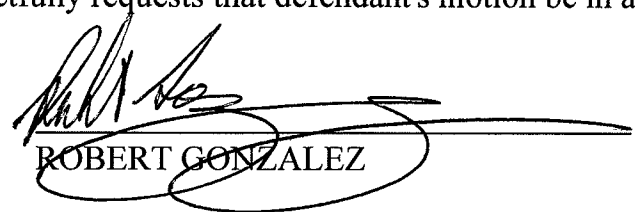
8. That deponent received two (2) letters from the plaintiff which have been marked as Exhibit "G" annexed hereto, which stated that the minimum requirement of reporting twenty-eight (28) hours per week for principals of any employer who was a signatory under the CBA would be effective on or after September 1, 2006, sixty (60) days after the expiration of the subject CBA herein.

9. That all of the above information was presented to the Arbitrator in this matter, Robert Herzog, Esq., either by way of testimony or by exhibits, at the Arbitration Hearings held on October 2, 2007 and December 10, 2007.

10. That there is no provision in the CBA dated July 1, 2001 which incorporates the prior provisions of any CBA previously executed by the parties.

11. That despite the ruling of the Arbitrator regarding any implied consent on behalf of the deponent, deponent never agreed, directly or indirectly, orally or in writing, to be bound by the March 10, 1993 Addendum, in perpetuity. That Addendum only related to the CBA dated March 10, 1993, and to no other CBA. The first time deponent was advised that the Fund claimed it was due any money under the CBA was after the August 24, 2006 letter. (See Exhibit "G" annexed hereto.)

WHEREFORE, deponent respectfully requests that defendant's motion be in all respects granted.


ROBERT GONZALEZ

Sworn to before me this
1st day of May, 2008


NOTARY PUBLIC

ROBERT N. COHEN
Notary Public, State of New York
No. 30-4701212
Qualified in Nassau County
Commission Expires July 31, 2009

OFFICE OF THE IMPARTIAL ARBITRATOR

-----X
In The Matter Of The Arbitration

between

New York City District Council of Carpenters
Pension Fund, New York City District Council of
Carpenters Welfare Fund, New York City
District Council of Carpenters Vacation Fund,
New York City District Council of Carpenters
Annuity Fund, New York City District Council
of Carpenters Apprenticeship, Journeyman
Retraining, Educational and Industry Fund,
New York City District Council of Carpenters
Charity Fund, United Brotherhood of Carpenters
and Joiners of America Fund and The New York
City and Vicinity Carpenters Labor-Management
Corporation, by Michael J. Forde and Paul
O'Brien, as Trustees

OPINION

AND

AWARD

And

Michael J. Forde, as Executive Secretary-
Treasurer, District Council for New York City
and Vicinity, United Brotherhood of Carpenters
and Joiners of America

(Petitioners)

-and-

THREE GUYS FLOOR COVERING WORKROOM INC.

(Employer)

-----X
BEFORE: Robert Herzog, Esq.

THREE GUYS FLOOR COVERING WORKROOM INC. (hereinafter referred
to as the "Employer") and the District Council of New York City and
Vicinity of the United Brotherhood of Carpenters and Joiners of
America are parties to an Independent Resilient Floor Coverers
Collective Bargaining Agreement, dated July 1, 2001, providing for
arbitration of disputes before the undersigned Arbitrator as

Impartial Arbitrator, and in which the Employer has therein agreed, for the duration of the Agreement, to pay contributions toward employee benefit funds (hereinafter collectively referred to as the "Funds"). The Petitioners, as beneficiaries of the Collective Bargaining Agreement, have standing before the Arbitrator. In accordance therewith, the Petitioners, by May 17, 2007 Notices of Intention to Arbitrate, demanded arbitration. The Funds alleged the Employer failed to make sufficient benefit contributions to the Funds for the periods of July 1, 2002 through November 11, 2004 and November 12, 2004 through July 6, 2006 as required by the Collective Bargaining Agreement.

Notices of Hearing advised the Employer, Employer Counsel, and the Petitioners that arbitration hearings were scheduled for October 2, 2007 and December 10, 2007.

On October 2, 2007 and December 10, 2007, at the place and times designated by the Notices of Hearing, Steven Kasarda, Esq. appeared on behalf of the Petitioners and Robert Cohen, Esq., of the Law Firm of Weinstein, Kaplan & Cohen, P.C., appeared on behalf of the Employer. Also present at both hearings were Salvatore Piccarillo and Robert Gonzalez, the Employer's President and Vice-President respectively.

The issues to be decided by the Arbitrator are:

1. Is dismissal of the arbitration justified based upon the Funds failure to produce written evidence requiring the Employer to make the contributions set forth in the Amended Final Audit?
2. If not, are Salvatore Piccarillo and Robert Gonzalez subject to the Member-Employer Addendum to the Collective Bargaining Agreement(s)?
3. If so, is the Employer delinquent in its contributions to the Funds for the periods July 1, 2002 through November 11, 2004 and November 12, 2004 through July 6, 2006?
4. If so, what shall be the remedy?

DISCUSSION

The Employer's President is a signatory to the Collective Bargaining Agreement covering the periods for which the Petitioners seek delinquency payments for the Funds. The Employer and the Union have been parties to prior collective bargaining agreements as a collective bargaining relationship has existed since at least March 1993. A Union form entitled "Collective Bargaining Agreement Preparation Form," dated March 3, 1993, documents interview answers given by the Employer representative to the Union. One entry on the form is "Member/Employer Addendum" and is checked "yes." Another Union form entitled "Administration Form," filled out on or about March 10, 1993, lists Salvatore Piccarillo and Robert Gonzalez as Corporate Officers and Stock Holders. But for their names, both Employer President Piccarillo and Employer Vice President Gonzalez

signed identical March 10, 1993 "Member-Employer Addendum" forms.
 "Member-Employer Addendum" provisions recite an established minimum
 Fund contribution of twenty-eight (28) hours per week for Messrs.
 Piccarillo and Gonzalez:

MEMBER-EMPLOYER ADDENDUM

F B C

ADDENDUM TO COLLECTIVE BARGAINING AGREEMENT

DATED MARCH 10 1993 BETWEEN THE NEW YORK CITY DISTRICT COUNCIL
 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND.....
 NAME OF FIRM THREE GUYS FLOOR COVERING WORKROOM INC.

ADDRESS 271 40TH STREET BROOKLYN NY 11232
SALVATORE PICCARILLO
 member-employer and the above-named

Corporation hereby represent that SALVATORE PICCARILLO is a (shareholder and/or
 officer or director) of the Corporation and intends to perform regular work as an
 "employee", which is within the Jurisdiction of the Union as set forth in the
 Collective Bargaining Agreement.

SALVATORE PICCARILLO and the Corporation consent and agree
 that in order to substantiate that SALVATORE PICCARILLO is an
 "employee" within the terms of the Collective Bargaining Agreement and thereby
 eligible to qualify as an "employee" with the New York City District Council of
 Carpenters' Fringe Benefit Funds, the Corporation shall report and pay weekly
 contributions on his behalf to the Fringe Benefit Funds in a minimum amount
 representing contributions for twenty-eight (28) hours work (Building Construction)
 thirty-two (32) hours work (shop) or 32 hours work (Heavy Construction). In the
 event that SALVATORE PICCARILLO works in excess of the minimum
 hours per week as an "employee", contributions shall be paid for all additional
 hours worked in accordance with the Collective Bargaining Agreement.

In the event that the Corporation fails to pay weekly contributions
 for at least twenty-eight (28) hours work per week (Building Construction),
 thirty-two (32) hours work per week (shop) or thirty-two (32) hours per week
 (Heavy Construction) it is consented and agreed that SALVATORE PICCARILLO
 shall be deemed outside that Collective Bargaining Agreement and not entitled
 to any benefits from the New York City District Council of Carpenters Fringe
 Benefit Funds.

The above Addendum is subject to the Constitution and Laws
 of the United Brotherhood of Carpenters and Joiners of America, Section 44, Article
 J, must be fully complied with.

119-46-8932
 Social Security Number

THREE GUYS FLOOR COVERING WORKROOM INC.
 Name of Firm

X [Signature]
 Principal (Title)

X SALVATORE PICCARILLO
 Member-Employer

The Employer's position is the signed "Member-Employer Addendum" only applied to the collective bargaining agreement in effect on March 10, 1993 and when the collective bargaining agreement expired, so too did the authorization of the "Member-Employer Addendum" expire:

However, these Member-Employer Addendums only apply to the Collective Bargaining Agreements dated March 10, 1993 and November 19, 1993 and not to the Collective Bargaining Agreement ... which covers the period July 1, 2001 through July 30, 2006.

... Reasonable contract interpretation based on the documents presented in this case clearly reveals that ... there was no Member-Employer Addendum signed in connection with the July 1, 2001 contract

[EMPLOYER BRIEF, pages 3 & 4]

By signing the "Member-Employer Addendums" in 1993, Employer President Piccarillo and Vice President Gonzalez were put on notice and acknowledged that, as a "shareholder and/or officer or director" of Three Guys Floor Covering Workroom Inc., contributions of twenty-eight (28) hours per week would have to be submitted to the Funds for them to be Fund participants and be eligible for Fund benefits.

If the Employer's premise were to be accepted, the signed Addendums expired when the "March 10, 1993 and November 19, 1993" collective bargaining agreements expired. It then follows that Messrs. Piccarillo and Gonzalez's eligibility to participate in Fund benefits also expired which would have been manifested by the Employer no longer submitting contributions to the Funds on Messrs. Piccarillo and Gonzalez's behalf.

The Employer's actions defeat the Employer's argument that the Addendum applied only to the "March 10, 1993 and November 19, 1993"

collective bargaining agreements and not beyond. The Employer gave its implied consent to be bound by the Addendums during the duration of subsequent collective bargaining agreements by continuing to make contributions to the Funds on Messrs. Piccarillo and Gonzalez's behalf after the "March 10, 1993 and November 19, 1993" collective bargaining agreements expired.

Implied consent. That manifested by signs, actions, or facts, or by inaction or silence, which raise a presumption or inference that the consent has been given. An inference arising from a course of conduct or relationship between the parties, in which a mutual acquiescence or a lack of objection under circumstances signifying assent. ... [*Black's Law Dictionary, Sixth Edition*, page 305]

Fund Audit Reports reflect that the Employer submitted the following contributions to the Funds for the weeks indicated:

CONTRIBUTION HOURS SUBMITTED

WEEK ENDING	S. PICCARILLO	R. GONZALEZ	WEEK ENDING	S. PICCARILLO	R. GONZALEZ
08/01/2002		35	04/03	21	21
08/08		21	04/10	21	21
10/03	21	21	05/08	21	21
10/10	21	21	05/18	21	21
10/17	21	21	05/22	21	21
10/24	21	21	05/29	21	21
10/31	21	21	06/05	21	21
11/07	21	21	06/12	21	
11/14	21	21	06/19	21	
11/21	21	21	07/03	21	21
11/27	21	21	07/10	21	21
12/04	21	21	07/17	21	21
12/19	21	21	07/24	21	21
12/26	21	21	07/31	21	21
01/02/03	21	21	08/14	42	42
01/09	21	21	08/21	21	21
01/16	21	21	08/28	21	21
01/23	21		09/04	21	21
01/31	21		09/11	21	21
02/06	21	21	09/18	21	21
02/13	21	21	09/25	21	21
02/20	21	21	10/02	21	21
02/27	21	21	10/09	21	21
03/06	21	21	10/16	21	21
03/13	21	21	10/23	21	21
03/20	21	21	10/30	21	21
03/27	21	21	11/06	21	21

WEEK ENDING	S. PICCARILLO	R. GONZALEZ	WEEK ENDING	S. PICCARILLO	R. GONZALEZ
11/13	21	21	02/17	21	21
11/20	21	21	02/24	21	21
11/27	21	21	03/03	21	21
12/11	21	21	03/10	21	21
12/18	21	21	03/17	21	21
12/25	21	21	03/24	21	21
12/31	21	21	03/31	21	21
01/09/04	21	21	04/07	21	21
01/15	21	21	04/14	21	21
01/22	21	21	04/21	21	21
01/29	21	21	05/12	21	21
02/05	21	21	05/19	21	21
02/12	21	21	05/26	21	21
04/08	21	21	06/02	21	21
04/15	21	21	06/09	21	21
04/22	21	21	06/16	21	21
05/06	42	42	06/23	21	21
05/13	21	21	06/30	21	21
05/20	21	21	07/07	28	28
05/27	21	21	07/14	21	21
06/03	21	21	07/21	21	21
06/10	21	21	07/28	21	21
06/17	21	21	08/04	21	21
06/24	22	22	08/11	21	21
06/30	21	21	08/18	21	21
07/08	21	14	08/25	21	21
07/15	21	21	09/01	21	21
07/22	21	21	09/08	21	21
07/29	21	21	09/15	21	21
08/05	21	21	09/22	21	21
08/12	21	21	09/29	21	21
08/19	21	21	10/06	21	21
08/26	21	21	10/13	21	21
09/02	21	21	10/20	21	21
09/09	21	21	10/27	21	21
09/16	21	21	11/03	21	21
09/23	21	21	11/10	28	28
09/30	21	21	11/17	21	21
10/07	21	21	11/24	21	21
10/14	21	21	12/08	21	21
10/21	21	21	12/15	21	21
10/28	21	21	12/22	21	21
11/04	21	21	12/29	21	21
11/11	21	21	01/05/06	21	21
11/18	21	21	01/12	21	21
11/25	21	21	01/19	21	21
12/02	21	21	01/26	21	21
12/09	22.5	22.5	02/02	21	21
12/16	21	21	02/09	21	21
12/23	21	21	02/16	21	21
12/30	21	21	02/23	21	21
01/06/05	21	21	03/02	21	21
01/13	21	21	03/09	21	21
01/20	21	21	03/16	21	21
01/27	21	21	03/23	21	21
02/03	21	21	04/06	21	21
02/10	21	21	04/13	21	21

WEEK ENDING	S. PICCARILLO	R. GONZALEZ	WEEK ENDING	S. PICCARILLO	R. GONZALEZ
04/20	21	21	05/25	21	21
04/27	21	21	06/01	21	21
05/04	21	21	06/08	21	21
05/18	21	21	06/15	21	21

The Employer engaged in a pattern or course of conduct that signified assent by the Employer to Member-Employer participation in the Funds for Messrs. Piccarillo and Gonzalez during the audit periods. Week after week, month after month, year after year, the Employer submitted to the Funds weekly contributions of twenty-one (21) hours on behalf of Messrs. Piccarillo and Gonzalez. Thus, it is not a question of whether the Employer signed Member-Employer Addendums after the "March 10, 1993 and November 1993" collective bargaining agreements expired, but rather a question of whether the amount of contributions submitted by the Employer during the audit periods for Messrs. Piccarillo and Gonzalez was the proper amount.

Collective Bargaining Agreement Articles XI and XVIII are significant:

Article XI, Fringe Benefit Funds

B. ... The Contractor and the Union acknowledge that they are represented by their duly designated Trustees to administer the various Fringe Benefit Trust Funds provided for in this contract. ... [E]ach Employer hereby agrees that the Fringe Benefit Fund Trustees shall have the necessary powers to fulfill their fiduciary obligations in order to fully protect each Contractor signed to this Agreement and their employee-beneficiaries under the respective plans.

D. Each Employer shall be bound by all of the terms and conditions of the Agreements and Declarations of Trust, creating the Welfare Fund, Pension Fund, Vacation Fund, Annuity Fund, New York City and Vicinity Labor Management Cooperation Fund, United Brotherhood of Carpenters and Joiners of America Fund, Apprenticeship Journeymen Retraining Educational and Industry Fund, and Supplemental Funds, as amended, and by all By-Laws adopted to regulate each of said Funds. ...

In Article XVIII, Effectuating Clause, the Employer's President's signature appears twice. Immediately above the second signature is the following provision:

The party of the First Part, herein referred to as the Employer, signatory to the Agreement, hereby acknowledges receipt of copies of the Agreement and Declaration of Trust of the New York City District Council of Carpenters Welfare Fund; Pension Fund; Apprenticeship, Journeymen Retraining, Educational and Industry Fund; United Brotherhood of Carpenters and Joiners of America Fund; New York City and Vicinity Carpenters Labor Management Fund; Supplemental Funds; Annuity Fund; and Vacation Fund.

By operation of Articles XI and XVIII, the Employer's continued contribution actions for Messrs. Piccarillo and Gonzalez during the audit years, albeit at the wrong contribution amount, were nonetheless an assent to participation in the Funds for twenty-eight (28) hours weekly under the terms and policies set by the Funds' Trustees. Messrs. Piccarillo and Gonzalez signing the March 10, 1993 Member-Employer Addendums placed the Employer on notice that the Employer **"shall report and pay weekly contributions on ... [Messrs. Piccarillo and Gonzalez's behalf] to the Fringe Benefit Funds in a minimum amount representing contributions for twenty-eight (28) hours work ..."** The Funds' Board of Trustees reaffirmed its policy in a letter to all "Contributing Employers to the Carpenters Benefit Funds" that **"the minimum required contribution is twenty-eight (28) hours per week."** Twenty-eight (28) hours means twenty-eight (28) hours, not twenty-one (21) hours. The Employer is liable for all deficient weekly contributions less than twenty-eight (28) hours during the audited periods for Messrs. Piccarillo and Gonzalez. The Employer's Dismissal Request is denied.

Petitioners' witness testimony and evidence established that:

- During the July 1, 2002 through November 11, 2004 and November 12, 2004 through July 6, 2006 periods, the Employer was bound to a Collective Bargaining Agreement with the District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America.
- The Collective Bargaining Agreement and incorporated by reference Trust documents and Trustee policies obligated the Employer to make certain payments to Fringe Benefit Trust Funds on behalf of the Employer's "shareholders and officers," to wit Messrs. Piccarillo and Gonzalez, including weekly contributions for Messrs. Piccarillo and Gonzalez in the minimum amount of twenty-eight (28) hours.
- The Collective Bargaining Agreement authorized the Funds to conduct audits of the Employer's books and records in order to verify that all the required contributions were made to each of the aforesaid Fringe Benefit Trust Funds maintained by the Funds.
- In accordance with this auditing provision, an accountant, employed by the Funds, and with the consent of the Employer, performed an audit of the Employer's books and records.

The testimony of the Funds' auditor, Mr. Neil Alexis, established that the audits of the Employer's books and records uncovered delinquencies in the amount of contributions due the Funds during the periods of July 1, 2002 through November 11, 2004 and

November 12, 2004 through July 6, 2006. The testimony further revealed that copies of the Audit Summary Report and Revised Audit Summary Reports had been forwarded to the Employer. Thereafter, the Funds demanded payment by the Employer. When the Employer failed to comply with the payment demand, the Notice of Intent to Arbitrate issued.

Auditor Alexis' testimony set forth the accounting method employed during the course of the audit and the computation of the amount of each alleged delinquency. The total amount of the delinquency for the July 1, 2002 through November 11, 2004 period was seventeen thousand one hundred forty-six dollars and ten cents (\$17,146.10); the total amount of the delinquency for the November 12, 2004 through July 6, 2006 period was twelve thousand three hundred seventy-five dollars and sixty-one cents (\$12,375.61). The Petitioners requested an award for contributions owed, interest, liquidated damages, late payment interest, promotional fund assessment, audit and counsel fees, arbitration and court costs as provided for by the Collective Bargaining Agreement and Trust Fund documents. Testimony computing these amounts was received into evidence.

AWARD

Based upon the substantial and credible evidence of the case as a whole:

1. THREE GUYS FLOOR COVERING WORKROOM INC. is delinquent in its Fringe Benefit payments due and owing to the Funds under the terms of the Collective Bargaining Agreement;
2. THREE GUYS FLOOR COVERING WORKROOM INC. shall pay to the Funds forthwith the said delinquency amount, interest on said delinquency amount, liquidated damages, late payment interest the promotional fund assessment, the Funds' audit and counsel's fees, the undersigned Arbitrator's fee, and all associated court costs in the following amounts:

July 1, 2002 through November 11, 2004 Period:


Principal Due	\$ 17,146.10
Interest Due	8,889.28
Liquidated Damages	8,889.28
Late Payment Interest	27.57
Promotional Fund	203.57
Court Costs	375.00
Audit Costs	1,450.00
Attorney's Fee	1,500.00
Arbitrator's Fee	3,000.00
TOTAL	\$ 41,480.80

November 12, 2004 through July 6, 2006 Period:

Principal Due	\$ 12,375.61
Interest Due	1,951.73
Liquidated Damages	2,583.82
Late Payment Interest	206.58
Promotional Fund	148.61
Audit Costs	1,450.00
TOTAL	\$ 18,716.35

COMBINED GRAND TOTAL: \$ 60,197.15

3. THREE GUYS FLOOR COVERING WORKROOM INC. shall pay to the District Council Carpenters Benefit Funds the aggregate amount of sixty thousand one hundred ninety-seven dollars and fifteen cents (\$60,197.15) with interest to accrue at the rate of 10% from the date of this Award.


Robert Herzog
Arbitrator

Dated: February 4, 2008

State of New York)
County of Rockland)

I, Robert Herzog, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.


Robert Herzog
Arbitrator

Dated: February 4, 2008

To: THREE GUYS FLOOR COVERING WORKROOM INC.
Attn: Mr. Salvatore Piccarillo, President
545 Eighth Avenue, 8th Floor
New York, New York 10018

Robert N. Cohen, Esq.
Weinstein, Kaplan & Cohen, P.C.
1325 Franklin Avenue, Suite 210
Garden City, New York 11530

Steven Kasarda, Esq.
New York City District Council Carpenters Benefit Funds
395 Hudson Street
New York, New York 10014

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
THE NEW YORK CITY DISTRICT COUNCIL OF
CARPENTERS PENSION FUND, NEW YORK CITY
DISTRICT COUNCIL OF CARPENTERS WELFARE
FUND, NEW YORK CITY DISTRICT COUNCIL OF
CARPENTERS VACATION FUND, NEW YORK CITY
DISTRICT COUNCIL OF CARPENTERS ANNUITY FUND,
NEW YORK CITY DISTRICT COUNCIL OF CARPENTERS
APPRENTICESHIP, JOURNEYMAN RETRAINING,
EDUCATIONAL AND INDUSTRY FUND, NEW YORK
CITY DISTRICT COUNCIL OF CARPENTERS CHARITY
FUND, and THE NEW YORK CITY AND VICINITY
CARPENTERS LABOR MANAGEMENT COOPERATION
FUND, by MICHAEL J. FORDE, and PAUL O'BRIEN,
as TRUSTEES, and MICHAEL J. FORDE AS EXECUTIVE
SECRETARY-TREASURER, DISTRICT COUNCIL FOR NEW
YORK CITY AND VICINITY, UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA,

08 CV 3748
SUMMONS

Judge Hellerstein

Plaintiffs,

-against-

THREE GUYS FLOOR COVERING WORKROOM INC.,

Defendant.
-----X

TO:

Three Guys Floor Covering Workroom Inc.
545 Eighth Avenue, 8th Floor
New York, NY 10018

YOU ARE HEREBY SUMMONED and required to file with the clerk of this court and serve upon

O'DWYER & BERNSTIEN, LLP
52 Duane Street
New York, New York 10007
(212) 571-7100

an answer to the complaint which is herewith served upon you, within **30 days** after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

J. MICHAEL McMAHON

APR 21 2008

CLERK

DATE

BY DEPUTY CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
THE NEW YORK CITY DISTRICT COUNCIL OF
CARPENTERS PENSION FUND, NEW YORK CITY
DISTRICT COUNCIL OF CARPENTERS WELFARE
FUND, NEW YORK CITY DISTRICT COUNCIL OF
CARPENTERS VACATION FUND, NEW YORK CITY
DISTRICT COUNCIL OF CARPENTERS ANNUITY FUND,
NEW YORK CITY DISTRICT COUNCIL OF CARPENTERS
APPRENTICESHIP, JOURNEYMAN RETRAINING,
EDUCATIONAL AND INDUSTRY FUND, NEW YORK
CITY DISTRICT COUNCIL OF CARPENTERS CHARITY
FUND, UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA FUND and THE NEW YORK CITY
AND VICINITY CARPENTERS LABOR MANAGEMENT
CORPORATION, by MICHAEL J. FORDE, and PAUL O'BRIEN,
as TRUSTEES, AND MICHAEL J. FORDE AS EXECUTIVE
SECRETARY-TREASURER, DISTRICT COUNCIL FOR NEW
YORK CITY AND VICINITY, UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA,

Plaintiffs,

-against-

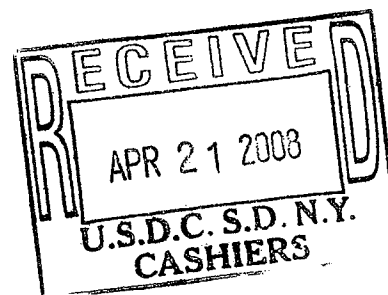
THREE GUYS FLOOR COVERING WORKROOM INC.,

Defendant.
-----X

'08 CIV 3748
08 CV

COMPLAINT

Judge Hellerstein



Plaintiffs, (hereinafter also referred to as "Benefit Funds"), by their attorneys O'Dwyer & Bernstien, LLP, for their Complaint allege as follows:

NATURE OF THE CASE

1. This is an action to confirm and enforce an Arbitrator's Award rendered pursuant to a collective bargaining agreement ("Agreement") between The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America ("Union") and Three Guys Floor Covering Workroom Inc. ("Employer").

JURISDICTION

2. This Court has subject matter jurisdiction over this proceeding pursuant to section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. §185, sections 502(a)(3)(B)(ii), (d)(1), (e) and (g) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§1132(a)(3)(B)(ii), (d)(1), (e) and (g), section 515 of ERISA, 29 U.S.C. §1145, and section 9 of the Federal Arbitration Act, 9 U.S.C. §9.

3. Personal jurisdiction is based upon Section 502(e)(2) of ERISA, 29 U.S.C. §1132(e)(2).

VENUE

4. Venue is proper in this district in that Plaintiffs' offices are located in this district.

PARTIES

5. At all times relevant herein the Plaintiffs were jointly administered, multi-employer, Taft-Hartley Benefit Funds administered by trustees designated by a union and by employers, established and maintained pursuant to section 302(c)(5) of the LMRA, 29 U.S.C. §186(c)(5). Plaintiffs Forde and O'Brien are fiduciaries of the Benefit Funds within the meaning of ERISA sections 3(21) and 502, 29 U.S.C. §§1002(21) and 1132.

6. The Benefit Funds are employee benefit plans within the meaning of sections 3(1) and (3) of ERISA, 29 U.S.C. §1002(1) and (3) and are maintained for the purposes of providing health, medical and related welfare benefits, pension and other benefits to eligible participants and beneficiaries on whose behalf they receive contributions from numerous employers pursuant to collective bargaining agreements between the employers and the Union.

7. Upon information and belief defendant Three Guys Floor Covering Workroom Inc. is a domestic corporation incorporated under the laws of the State of New York with a principal place of business located at 545 Eighth Avenue, 8th Floor, New York, NY 10018.

8. The defendant is an employer within the meaning of section 3(5) of ERISA, 29

U.S.C. §1002 (5).

FIRST CLAIM FOR RELIEF

9. Defendant was bound at all relevant times by a collective bargaining agreement with the Union, which, by its terms, became effective July 1, 2001. Said Agreement provides, inter alia, that the defendant shall make monetary contributions to the Benefit Funds on the behalf of covered employees, and for the submission of disputes to final, binding arbitration.

10. A dispute arose during the period of the Agreement between the parties when the Employer failed to comply with obligations under the Agreement to make contributions for employees in the bargaining unit.

11. Pursuant to the arbitration clause in the Agreement, the dispute was submitted to arbitration to Robert Herzog, the duly designated impartial arbitrator.

12. Thereafter, upon due notice to all parties, the arbitrator duly held a hearing and rendered his award, in writing, dated February 4, 2008 determining said dispute. Upon information and belief, a copy of the award was delivered to the defendant (A copy of the award is annexed hereto as Exhibit "A" and made part hereof).

13. The arbitrator found that Three Guys Floor Covering Workroom Inc. had failed to make contributions due to the Benefit Funds for the period July 1, 2002 through July 6, 2006, in the principal amount of \$60,197.15.

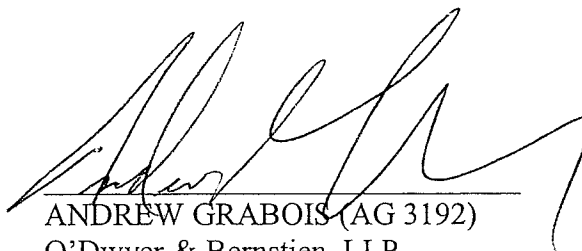
14. The arbitrator also found that Three Guys Floor Covering Workroom Inc. was required to pay interest on the principal amount due at the rate of 10% per annum from the date of the award.

15. The defendant has failed to abide by the award.

WHEREFORE, Plaintiffs demand judgment against defendant as follows:

1. For an order confirming the arbitration award in all respects;
2. For entry of judgment in favor of the Plaintiffs and against Three Guys Floor Covering Workroom Inc. in the principal amount of \$60,197.15, plus 10% interest per year from the date of the award to the date of entry of judgment;
3. For attorneys' fees and costs of this action;
4. For such other and further relief as this court may deem just and proper.

Dated: New York, New York
April 21, 2008



ANDREW GRABOIS (AG 3192)
O'Dwyer & Bernstein, LLP
Attorneys for Plaintiffs
52 Duane Street
New York, NY 10007
(212) 571-7100

OFFICE OF THE IMPARTIAL ARBITRATOR

-----X
In The Matter Of The Arbitration

between

New York City District Council of Carpenters
Pension Fund, New York City District Council of
Carpenters Welfare Fund, New York City
District Council of Carpenters Vacation Fund,
New York City District Council of Carpenters
Annuity Fund, New York City District Council
of Carpenters Apprenticeship, Journeyman
Retraining, Educational and Industry Fund,
New York City District Council of Carpenters
Charity Fund, United Brotherhood of Carpenters
and Joiners of America Fund and The New York
City and Vicinity Carpenters Labor-Management
Corporation, by Michael J. Forde and Paul
O'Brien, as Trustees

OPINION

AND

AWARD

And

Michael J. Forde, as Executive Secretary-
Treasurer, District Council for New York City
and Vicinity, United Brotherhood of Carpenters
and Joiners of America

(Petitioners)

-and-

THREE GUYS FLOOR COVERING WORKROOM INC.

(Employer)

-----X
BEFORE: Robert Herzog, Esq.

THREE GUYS FLOOR COVERING WORKROOM INC. (hereinafter referred
to as the "Employer") and the District Council of New York City and
Vicinity of the United Brotherhood of Carpenters and Joiners of
America are parties to an Independent Resilient Floor Coverers
Collective Bargaining Agreement, dated July 1, 2001, providing for
arbitration of disputes before the undersigned Arbitrator as

Impartial Arbitrator, and in which the Employer has therein agreed, for the duration of the Agreement, to pay contributions toward employee benefit funds (hereinafter collectively referred to as the "Funds"). The Petitioners, as beneficiaries of the Collective Bargaining Agreement, have standing before the Arbitrator. In accordance therewith, the Petitioners, by May 17, 2007 Notices of Intention to Arbitrate, demanded arbitration. The Funds alleged the Employer failed to make sufficient benefit contributions to the Funds for the periods of July 1, 2002 through November 11, 2004 and November 12, 2004 through July 6, 2006 as required by the Collective Bargaining Agreement.

Notices of Hearing advised the Employer, Employer Counsel, and the Petitioners that arbitration hearings were scheduled for October 2, 2007 and December 10, 2007.

On October 2, 2007 and December 10, 2007, at the place and times designated by the Notices of Hearing, Steven Kasarda, Esq. appeared on behalf of the Petitioners and Robert Cohen, Esq., of the Law Firm of Weinstein, Kaplan & Cohen, P.C., appeared on behalf of the Employer. Also present at both hearings were Salvatore Piccarillo and Robert Gonzalez, the Employer's President and Vice-President respectively.

The issues to be decided by the Arbitrator are:

1. Is dismissal of the arbitration justified based upon the Funds failure to produce written evidence requiring the Employer to make the contributions set forth in the Amended Final Audit?
2. If not, are Salvatore Piccarillo and Robert Gonzalez subject to the Member-Employer Addendum to the Collective Bargaining Agreement(s)?
3. If so, is the Employer delinquent in its contributions to the Funds for the periods July 1, 2002 through November 11, 2004 and November 12, 2004 through July 6, 2006?
4. If so, what shall be the remedy?

DISCUSSION

The Employer's President is a signatory to the Collective Bargaining Agreement covering the periods for which the Petitioners seek delinquency payments for the Funds. The Employer and the Union have been parties to prior collective bargaining agreements as a collective bargaining relationship has existed since at least March 1993. A Union form entitled "Collective Bargaining Agreement Preparation Form," dated March 3, 1993, documents interview answers given by the Employer representative to the Union. One entry on the form is "Member/Employer Addendum" and is checked "yes." Another Union form entitled "Administration Form," filled out on or about March 10, 1993, lists Salvatore Piccarillo and Robert Gonzalez as Corporate Officers and Stock Holders. But for their names, both Employer President Piccarillo and Employer Vice President Gonzalez

signed identical March 10, 1993 "Member-Employer Addendum" forms.
 "Member-Employer Addendum" provisions recite an established minimum
 Fund contribution of twenty-eight (28) hours per week for Messrs.
 Piccarillo and Gonzalez:

MEMBER-EMPLOYER ADDENDUM

F *FC*

ADDENDUM TO COLLECTIVE BARGAINING AGREEMENT

DATED MARCH 10 1993 BETWEEN THE NEW YORK CITY DISTRICT COUNCIL
 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND.....
 NAME OF FIRM THREE GUYS FLOOR COVERING WORKROOM INC.

ADDRESS 271 40TH STREET BROOKLYN NY 11232
SALVATORE PICCARILLO and the above-named
 member-employer

Corporation hereby represent that SALVATORE PICCARILLO is a (shareholder and/or
 officer or director) of the Corporation and intends to perform regular work as an
 "employee", which is within the Jurisdiction of the Union as set forth in the
 Collective Bargaining Agreement.

SALVATORE PICCARILLO and the Corporation consent and agree
 that in order to substantiate that SALVATORE PICCARILLO is an
 "employee" within the terms of the Collective Bargaining Agreement and thereby
 eligible to qualify as an "employee" with the New York City District Council of
 Carpenters' Fringe Benefit Funds, the Corporation shall report and pay weekly
 contributions on his behalf to the Fringe Benefit Funds in a minimum amount
 representing contributions for twenty-eight (28) hours work (Building Construction)
 thirty-two (32) hours work (shop) or 32 hours work (Heavy Construction). In the
 event that SALVATORE PICCARILLO works in excess of the minimum
 hours per week as an "employee", contributions shall be paid for all additional
 hours worked in accordance with the Collective Bargaining Agreement.

In the event that the Corporation fails to pay weekly contributions
 for at least twenty-eight (28) hours work per week (Building Construction),
 thirty-two (32) hours work per week (shop) or thirty-two (32) hours per week
 (Heavy Construction) it is consented and agreed that SALVATORE PICCARILLO
 shall be deemed outside that Collective Bargaining Agreement and not entitled
 to any benefits from the New York City District Council of Carpenters Fringe
 Benefit Funds.

The above Addendum is subject to the Constitution and Laws
 of the United Brotherhood of Carpenters and Joiners of America, Section 44, Article
 J, must be fully complied with.

119-46-8932
 Social Security Number

THREE GUYS FLOOR COVERING WORKROOM INC.
 Name of Firm
 X *[Signature]* President
 Principal (Title)
 X SALVATORE PICCARILLO
 Member-Employer

The Employer's position is the signed "Member-Employer Addendum" only applied to the collective bargaining agreement in effect on March 10, 1993 and when the collective bargaining agreement expired, so too did the authorization of the "Member-Employer Addendum" expire:

However, these Member-Employer Addendums only apply to the Collective Bargaining Agreements dated March 10, 1993 and November 19, 1993 and not to the Collective Bargaining Agreement ... which covers the period July 1, 2001 through July 30, 2006.

... Reasonable contract interpretation based on the documents presented in this case clearly reveals that ... there was no Member-Employer Addendum signed in connection with the July 1, 2001 contract

[EMPLOYER BRIEF, pages 3 & 4]

By signing the "Member-Employer Addendums" in 1993, Employer President Piccarillo and Vice President Gonzalez were put on notice and acknowledged that, as a "shareholder and/or officer or director" of Three Guys Floor Covering Workroom Inc., contributions of twenty-eight (28) hours per week would have to be submitted to the Funds for them to be Fund participants and be eligible for Fund benefits.

If the Employer's premise were to be accepted, the signed Addendums expired when the "March 10, 1993 and November 19, 1993" collective bargaining agreements expired. It then follows that Messrs. Piccarillo and Gonzalez's eligibility to participate in Fund benefits also expired which would have been manifested by the Employer no longer submitting contributions to the Funds on Messrs. Piccarillo and Gonzalez's behalf.

The Employer's actions defeat the Employer's argument that the Addendum applied only to the "March 10, 1993 and November 19, 1993"

collective bargaining agreements and not beyond. The Employer gave its implied consent to be bound by the Addendums during the duration of subsequent collective bargaining agreements by continuing to make contributions to the Funds on Messrs. Piccarillo and Gonzalez's behalf after the "March 10, 1993 and November 19, 1993" collective bargaining agreements expired.

Implied consent. That manifested by signs, actions, or facts, or by inaction or silence, which raise a presumption or inference that the consent has been given. An inference arising from a course of conduct or relationship between the parties, in which a mutual acquiescence or a lack of objection under circumstances signifying assent. ... [*Black's Law Dictionary, Sixth Edition*, page 305]

Fund Audit Reports reflect that the Employer submitted the following contributions to the Funds for the weeks indicated:

CONTRIBUTION HOURS SUBMITTED

WEEK ENDING	S. PICCARILLO	R. GONZALEZ	WEEK ENDING	S. PICCARILLO	R. GONZALEZ
08/01/2002		35	04/03	21	21
08/08		21	04/10	21	21
10/03	21	21	05/08	21	21
10/10	21	21	05/18	21	21
10/17	21	21	05/22	21	21
10/24	21	21	05/29	21	21
10/31	21	21	06/05	21	21
11/07	21	21	06/12	21	
11/14	21	21	06/19	21	
11/21	21	21	07/03	21	21
11/27	21	21	07/10	21	21
12/04	21	21	07/17	21	21
12/19	21	21	07/24	21	21
12/26	21	21	07/31	21	21
01/02/03	21	21	08/14	42	42
01/09	21	21	08/21	21	21
01/16	21	21	08/28	21	21
01/23	21		09/04	21	21
01/31	21		09/11	21	21
02/06	21	21	09/18	21	21
02/13	21	21	09/25	21	21
02/20	21	21	10/02	21	21
02/27	21	21	10/09	21	21
03/06	21	21	10/16	21	21
03/13	21	21	10/23	21	21
03/20	21	21	10/30	21	21
03/27	21	21	11/06	21	21

WEEK ENDING	S. PICCARILLO	R. GONZALEZ	WEEK ENDING	S. PICCARILLO	R. GONZALEZ
11/13	21	21	02/17	21	21
11/20	21	21	02/24	21	21
11/27	21	21	03/03	21	21
12/11	21	21	03/10	21	21
12/18	21	21	03/17	21	21
12/25	21	21	03/24	21	21
12/31	21	21	03/31	21	21
01/09/04	21	21	04/07	21	21
01/15	21	21	04/14	21	21
01/22	21	21	04/21	21	21
01/29	21	21	05/12	21	21
02/05	21	21	05/19	21	21
02/12	21	21	05/26	21	21
04/08	21	21	06/02	21	21
04/15	21	21	06/09	21	21
04/22	21	21	06/16	21	21
05/06	42	42	06/23	21	21
05/13	21	21	06/30	21	21
05/20	21	21	07/07	28	28
05/27	21	21	07/14	21	21
06/03	21	21	07/21	21	21
06/10	21	21	07/28	21	21
06/17	21	21	08/04	21	21
06/24	22	22	08/11	21	21
06/30	21	21	08/18	21	21
07/08	21	14	08/25	21	21
07/15	21	21	09/01	21	21
07/22	21	21	09/08	21	21
07/29	21	21	09/15	21	21
08/05	21	21	09/22	21	21
08/12	21	21	09/29	21	21
08/19	21	21	10/06	21	21
08/26	21	21	10/13	21	21
09/02	21	21	10/20	21	21
09/09	21	21	10/27	21	21
09/16	21	21	11/03	21	21
09/23	21	21	11/10	28	28
09/30	21	21	11/17	21	21
10/07	21	21	11/24	21	21
10/14	21	21	12/08	21	21
10/21	21	21	12/15	21	21
10/28	21	21	12/22	21	21
11/04	21	21	12/29	21	21
11/11	21	21	01/05/06	21	21
11/18	21	21	01/12	21	21
11/25	21	21	01/19	21	21
12/02	21	21	01/26	21	21
12/09	22.5	22.5	02/02	21	21
12/16	21	21	02/09	21	21
12/23	21	21	02/16	21	21
12/30	21	21	02/23	21	21
01/06/05	21	21	03/02	21	21
01/13	21	21	03/09	21	21
01/20	21	21	03/16	21	21
01/27	21	21	03/23	21	21
02/03	21	21	04/06	21	21
02/10	21	21	04/13	21	21

WEEK ENDING	S. PICCARILLO	R. GONZALEZ	WEEK ENDING	S. PICCARILLO	R. GONZALEZ
04/20	21	21	05/25	21	21
04/27	21	21	06/01	21	21
05/04	21	21	06/08	21	21
05/18	21	21	06/15	21	21

The Employer engaged in a pattern or course of conduct that signified assent by the Employer to Member-Employer participation in the Funds for Messrs. Piccarillo and Gonzalez during the audit periods. Week after week, month after month, year after year, the Employer submitted to the Funds weekly contributions of twenty-one (21) hours on behalf of Messrs. Piccarillo and Gonzalez. Thus, it is not a question of whether the Employer signed Member-Employer Addendums after the "March 10, 1993 and November 1993" collective bargaining agreements expired, but rather a question of whether the amount of contributions submitted by the Employer during the audit periods for Messrs. Piccarillo and Gonzalez was the proper amount.

Collective Bargaining Agreement Articles XI and XVIII are significant:

Article XI, Fringe Benefit Funds

B. ... The Contractor and the Union acknowledge that they are represented by their duly designated Trustees to administer the various Fringe Benefit Trust Funds provided for in this contract. ... [E]ach Employer hereby agrees that the Fringe Benefit Fund Trustees shall have the necessary powers to fulfill their fiduciary obligations in order to fully protect each Contractor signed to this Agreement and their employee-beneficiaries under the respective plans.

D. Each Employer shall be bound by all of the terms and conditions of the Agreements and Declarations of Trust, creating the Welfare Fund, Pension Fund, Vacation Fund, Annuity Fund, New York City and Vicinity Labor Management Cooperation Fund, United Brotherhood of Carpenters and Joiners of America Fund, Apprenticeship Journeymen Retraining Educational and Industry Fund, and Supplemental Funds, as amended, and by all By-Laws adopted to regulate each of said Funds. ...

In Article XVIII, Effectuating Clause, the Employer's President's signature appears twice. Immediately above the second signature is the following provision:

The party of the First Part, herein referred to as the Employer, signatory to the Agreement, hereby acknowledges receipt of copies of the Agreement and Declaration of Trust of the New York City District Council of Carpenters Welfare Fund; Pension Fund; Apprenticeship, Journeymen Retraining, Educational and Industry Fund; United Brotherhood of Carpenters and Joiners of America Fund; New York City and Vicinity Carpenters Labor Management Fund; Supplemental Funds; Annuity Fund; and Vacation Fund.

By operation of Articles XI and XVIII, the Employer's continued contribution actions for Messrs. Piccarillo and Gonzalez during the audit years, albeit at the wrong contribution amount, were nonetheless an assent to participation in the Funds for twenty-eight (28) hours weekly under the terms and policies set by the Funds' Trustees. Messrs. Piccarillo and Gonzalez signing the March 10, 1993 Member-Employer Addendums placed the Employer on notice that the Employer **"shall report and pay weekly contributions on ... [Messrs. Piccarillo and Gonzalez's behalf] to the Fringe Benefit Funds in a minimum amount representing contributions for twenty-eight (28) hours work ..."** The Funds' Board of Trustees reaffirmed its policy in a letter to all "Contributing Employers to the Carpenters Benefit Funds" that **"the minimum required contribution is twenty-eight (28) hours per week."** Twenty-eight (28) hours means twenty-eight (28) hours, not twenty-one (21) hours. The Employer is liable for all deficient weekly contributions less than twenty-eight (28) hours during the audited periods for Messrs. Piccarillo and Gonzalez. The Employer's Dismissal Request is denied.

Petitioners' witness testimony and evidence established that:

- During the July 1, 2002 through November 11, 2004 and November 12, 2004 through July 6, 2006 periods, the Employer was bound to a Collective Bargaining Agreement with the District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America.
- The Collective Bargaining Agreement and incorporated by reference Trust documents and Trustee policies obligated the Employer to make certain payments to Fringe Benefit Trust Funds on behalf of the Employer's "shareholders and officers," to wit Messrs. Piccarillo and Gonzalez, including weekly contributions for Messrs. Piccarillo and Gonzalez in the minimum amount of twenty-eight (28) hours.
- The Collective Bargaining Agreement authorized the Funds to conduct audits of the Employer's books and records in order to verify that all the required contributions were made to each of the aforesaid Fringe Benefit Trust Funds maintained by the Funds.
- In accordance with this auditing provision, an accountant, employed by the Funds, and with the consent of the Employer, performed an audit of the Employer's books and records.

The testimony of the Funds' auditor, Mr. Neil Alexis, established that the audits of the Employer's books and records uncovered delinquencies in the amount of contributions due the Funds during the periods of July 1, 2002 through November 11, 2004 and

November 12, 2004 through July 6, 2006. The testimony further revealed that copies of the Audit Summary Report and Revised Audit Summary Reports had been forwarded to the Employer. Thereafter, the Funds demanded payment by the Employer. When the Employer failed to comply with the payment demand, the Notice of Intent to Arbitrate issued.

Auditor Alexis' testimony set forth the accounting method employed during the course of the audit and the computation of the amount of each alleged delinquency. The total amount of the delinquency for the July 1, 2002 through November 11, 2004 period was seventeen thousand one hundred forty-six dollars and ten cents (\$17,146.10); the total amount of the delinquency for the November 12, 2004 through July 6, 2006 period was twelve thousand three hundred seventy-five dollars and sixty-one cents (\$12,375.61). The Petitioners requested an award for contributions owed, interest, liquidated damages, late payment interest, promotional fund assessment, audit and counsel fees, arbitration and court costs as provided for by the Collective Bargaining Agreement and Trust Fund documents. Testimony computing these amounts was received into evidence.

AWARD

Based upon the substantial and credible evidence of the case as a whole:

1. THREE GUYS FLOOR COVERING WORKROOM INC. is delinquent in its Fringe Benefit payments due and owing to the Funds under the terms of the Collective Bargaining Agreement;
2. THREE GUYS FLOOR COVERING WORKROOM INC. shall pay to the Funds forthwith the said delinquency amount, interest on said delinquency amount, liquidated damages, late payment interest the promotional fund assessment, the Funds' audit and counsel's fees, the undersigned Arbitrator's fee, and all associated court costs in the following amounts:

July 1, 2002 through November 11, 2004 Period:

Principal Due	\$ 17,146.10
Interest Due	8,889.28
Liquidated Damages	8,889.28
Late Payment Interest	27.57
Promotional Fund	203.57
Court Costs	375.00
Audit Costs	1,450.00
Attorney's Fee	1,500.00
Arbitrator's Fee	3,000.00
TOTAL	\$ 41,480.80

November 12, 2004 through July 6, 2006 Period:

Principal Due	\$ 12,375.61
Interest Due	1,951.73
Liquidated Damages	2,583.82
Late Payment Interest	206.58
Promotional Fund	148.61
Audit Costs	1,450.00
TOTAL	\$ 18,716.35

COMBINED GRAND TOTAL: \$ 60,197.15


3. THREE GUYS FLOOR COVERING WORKROOM INC. shall pay to the District Council Carpenters Benefit Funds the aggregate amount of sixty thousand one hundred ninety-seven dollars and fifteen cents (\$60,197.15) with interest to accrue at the rate of 10% from the date of this Award.


Robert Herzog
Arbitrator

Dated: February 4, 2008

State of New York)
County of Rockland)

I, Robert Herzog, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.


Robert Herzog
Arbitrator

Dated: February 4, 2008

To: THREE GUYS FLOOR COVERING WORKROOM INC.
Attn: Mr. Salvatore Piccarillo, President
545 Eighth Avenue, 8th Floor
New York, New York 10018

Robert N. Cohen, Esq.
Weinstein, Kaplan & Cohen, P.C.
1325 Franklin Avenue, Suite 210
Garden City, New York 11530

Steven Kasarda, Esq.
New York City District Council Carpenters Benefit Funds
395 Hudson Street
New York, New York 10014

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

THE NEW YORK CITY DISTRICT COUNCIL OF
CARPENTERS PENSION FUND, NEW YORK CITY
DISTRICT COUNCIL OF CARPENTERS WELFARE
FUND, NEW YORK CITY DISTRICT COUNCIL OF
CARPENTERS VACATION FUND, NEW YORK
CITY DISTRICT COUNCIL OF CARPENTERS
ANNUITY FUND, NEW YORK CITY DISTRICT
COUNCIL OF CARPENTERS APPRENTICESHIP,
JOURNEYMAN RESTRAINING, EDUCATIONAL
AND INDUSTRY FUND, NEW YORK CITY
DISTRICT COUNCIL OF CARPENTERS CHARITY
FUND, and THE NEW YORK CITY AND VICINITY
CARPENTERS LABOR-MANAGEMENT
CORPORATION, By MICHAEL J. FORDE and
PAUL O'BRIEN, as TRUSTEES, and MICHAEL J.
FORDE AS EXECUTIVE SECRETARY-TREASURER,
DISTRICT COUNCIL FOR NEW YORK CITY AND
VICINITY, UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA,

Plaintiffs,

-against-

THREE GUYS FLOOR COVERING WORKROOM, INC.,

Defendant.

----- X

Defendant, THREE GUYS FLOOR COVERING WORKROOM, INC., by their
attorneys, WEINSTEIN, KAPLAN & COHEN, P.C., as and for its Answer to plaintiffs'
Complaint, respectfully alleges as follows:

1. Denies knowledge and information sufficient to form a belief as to the truth

of the allegations contained in paragraphs “2,” “3,” “4,” “5,” “6” and “8” of plaintiffs' Complaint.

2. Denies each and every allegation contained in paragraph “9” except admits that the defendant was a party to a Collective Bargaining Agreement with plaintiffs and begs leave of the Court to refer to the original of same for its terms at the time of trial.

3. Denies each and every allegation contained in paragraph “10” of plaintiffs' Complaint.

AS AND FOR A FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE

4. That the Court should vacate the Arbitration Award pursuant to the doctrine of “manifest disregard of the law and facts.”

AS AND FOR A SECOND, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE

5. That the Court should vacate the Arbitration Award because it violates the doctrine of “essence of the Collective Bargaining Agreement.”

AS AND FOR A FIRST, SEPARATE AND DISTINCT COUNTERCLAIM

6. That the Court should vacate the Arbitration Award herein based upon the doctrine of manifest disregard of the law and facts.”

AS AND FOR A SECOND, SEPARATE AND DISTINCT COUNTERCLAIM

7. That the Court should vacate the Arbitration Award herein since it violates the doctrine of “essence of the Collective Bargaining Agreement.”

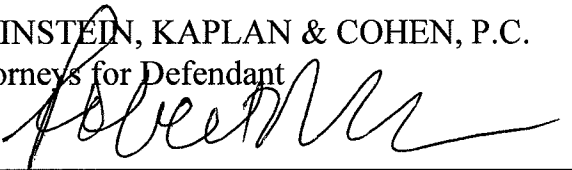
WHEREFORE, defendant respectfully requests that this Court dismiss plaintiffs'

Complaint in its entirety, grant defendant's Counterclaims to vacate the Arbitration Award, plus such other and further relief as to this Court may be just, proper and equitable under the premises.

Dated: Garden City, New York
April 30, 2008

Yours, etc.

WEINSTEIN, KAPLAN & COHEN, P.C.
Attorneys for Defendant

By: 
ROBERT N. COHEN (RC8274)
1325 Franklin Avenue
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(516) 877-2525

TO: O'DWYER & BERNSTIEN, LLP
ATTENTION: ANDREW GRABOIS, ESQ. (AG3192)
Attorneys for Plaintiffs
52 Duane Street
New York, New York 10007
(212) 571-7100

**INDEPENDENT
RESILIENT FLOOR COVERERS
AGREEMENT**

between

**THREE GUYS FLOOR COVERING WORKROOM INC.
545 8TH AVENUE; 8TH FLOOR
NEW YORK, NEW YORK 10018**

- and -

**THE DISTRICT COUNCIL OF NEW YORK
CITY AND VICINITY OF THE UNITED
BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA, AFL-CIO**

JULY 01, 2001 - JUNE 30, 2006

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AGREEMENT made and entered into this 1st day of July 2001 and effective as of July 01, 2001, by and between:

**THREE GUYS FLOOR COVERING WORKROOM INC.
545 8TH AVENUE; 8TH FLOOR
NEW YORK, NEW YORK 10018**

**HEREIN REFERRED TO AS
(THE "EMPLOYER")**

and the

**DISTRICT COUNCIL OF NEW YORK CITY AND
VICINITY OF THE UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA
HEREIN REFERRED TO AS
(THE "UNION" and/or THE "DISTRICT COUNCIL")**

ARTICLE I

JURISDICTION

(A) The Employer recognizes the Union as the sole and exclusive bargaining agent for those employees of the Employer covered by the Agreement doing work within the jurisdiction of of the Union.

(B) This Agreement shall cover, and grant the persons covered hereunder, work jurisdiction over all resilient floor covering and related materials, whenever applied, including, but not limited to, all work which consists of measuring, cutting, fitting, taking up and laying of new and old carpets, protective covering as necessary

to protect linoleum, cork carpet matting, linen, linoleum and rubber on walls, floors and ceilings, all resilient tile of cork, rubber, linoleum, mastic, asphalt, vinyl, or other composition tiles for floors, walls or ceilings, drilling of holes for sockets and pins, waxing of linoleum, rubber and all other above-mentioned floor, wall or ceiling covering, fitting devices for the attachment of carpet and other floor coverings, the priming of concrete and flash patching, the spreading of all adhesives and the preparation of cracks and expansion joints, laminates, installation of self-leveling floors(as underlayment or as finished floors) and fritz tile. Self leveling floors, seamless floor covering and the handling of all the above-mentioned materials, on jobsites, and any and all materials covered by the United Brotherhood of Carpenters and Joiners of America. Cement down wood flooring shall be deemed to be covered under this Agreement in any geographical area normally considered to be within the jurisdiction of the Union.

(C) This Agreement shall also cover all work which consists of sewing, altering, mending, binding or otherwise making, remodeling or repairing of new or old carpets, including oriental rugs, on commercial and rehabilitation jobs and in warehouses.

(D) The handling and installation, including the operation of any and all machinery and/or equipment in any way related to the handling and installation of all carpeting known as ASTRO-TURF or

any similar name or type, whether used indoors or outdoors, is under the jurisdiction of the Union. The spraying of cement and/or adhesives for the purpose of receiving any type of flooring materials wherever or however applied, as well as the operation of any other equipment in any way connected with such installation, shall be deemed to be covered under this Agreement and within the jurisdiction of the Union.

(E) Employees reporting for work outside of the geographical jurisdiction of this Collective Bargaining Agreement, having been directed to do so by an Employer who is bound by the provisions of this Agreement, shall be entitled to all the provisions of this Agreement, regardless of the wage and fringes prevailing in the geographical area in which they are directed to report to work. If the Union has a reciprocal agreement with other Unions outside of its jurisdictional area, then the balance, if any, of wages and fringe benefits shall be paid to the Union and/or the Fund. If no such reciprocal agreement exists, all such wages and fringe benefits shall be paid to the Union and/or Fund.

ARTICLE II

GEOGRAPHICAL JURISDICTION

This Agreement shall cover work performed by the Employer when employing Journeymen and all other employees within the scope of

this Agreement within the following territorial jurisdiction in the State of New York:

Counties of:	Bronx	Queens
	Kings	Richmond
	Nassau	Rockland
	Manhattan	Suffolk
	Orange	Westchester
	Putnam	Dutchess

ARTICLE III

UNION SECURITY

(A) All employees who are members of the Union at the time of signing of this Agreement shall continue membership in the Union. All other employees covered by this Agreement who are employed by Employers engaged primarily in the Building and Construction Industry shall become members of the Union seven (7) days following the beginning of employment by a member of the Employer or the date of this Agreement, whichever is later, and shall retain such membership in good standing during the term of this Agreement as a condition of continued employment by a member of the Employer.

(B) All employees covered by this Agreement who are employed by Employers not engaged primarily in the building and construction industry shall become members of the Union on the thirtieth (30) day following the beginning of employment, or the date of this Agreement, whichever is later, and shall retain such membership during the term of this Agreement as a condition of continued

employment.

(C) The Employer agrees upon notice from the Union to discharge any person covered hereunder who has not become or remained a member in good standing in the Local 2287, provided that such membership was available to the person based on terms and conditions applicable to other members and that membership was not denied or terminated for any reason other than the failure of the individual to tender periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership.

(D) Each Employer warrants that no enterprise which the Employer or any officer, stockholder, partner or agent of the Employer has "substantial de facto interest in now, or achieves during the term of this Agreement, shall engage in any activities covered under this Agreement without being bound to all the terms and conditions of this Agreement. The parties further acknowledge that those who engage in activity in violation of this provision cause great and incalculable damage to the Union and its members. Since the exact damage suffered by the Union due to a violation of this provision is not readily calculable, the parties agree that any Employer, officer, stockholder, partner or agent who violates this **Section**, as well as the Employer itself, shall pay liquidated damages in the sum of ten thousand (\$10,000) dollars or the amount of actual damages the Union can prove, whichever is higher to the

Union for each violation of this provision.

ARTICLE IV

HOURS OF LABOR

(A) The intent is to maintain the seven hour work day, thirty five hour work week. During the term of this Agreement the work day may be increased to eight hours at straight time pay hours and a forty hour work week with written notification to the District Council prior to commencement of job and must continue for the duration of the job. Overtime hours Monday through Friday shall be paid at time and one-half. Saturday pay shall be at the time and one-half rate. The Contractor is expected to establish and maintain a reasonable work week schedule allowing for unusual jobsite conditions. Other than an emergency, notice of all overtime work should be given to the Floor Coverers before noon if possible. Floor Coverers will never be penalized for refusing to work overtime.

(B) Flexible Starting Time: The normal work day shall start at eight (8) a.m. and may be changed by the Employer due to work site conditions to start between seven (7) a.m. and nine (9) a.m. for all or a portion of the employees. Notification to the Union will be given by the Employer when changed from the normal eight (8) a.m. starting time. No Floor Coverer is to start work before

the designated starting time.

(C) All additional hours worked shall be paid at the time and one-half rate.

(D) Saturday: All hours worked shall be paid for at the rate of time and one-half. When a holiday falls on a Saturday, then the rate shall be double time.

(E) All Floor Coverers will be given five (5) minutes time to wrap up their tools and wash up before lunch and quitting time.

(F) Shift Work: The Employer may work two shifts with the first shift working eight (8) a.m. to the end of the shift at straight time rate of pay. The second shift will receive one hour at double time rate for the last hour of the shift. (eight for seven, nine for eight). In addition, members of the second shift shall be allowed one-half ($\frac{1}{2}$) hour to eat, with this time being included in the hours of work established. There must be a first shift to work the second shift. All additional hours worked shall be paid at the time and one-half rate. The Employer shall notify the Union in advance of the beginning of the shift schedule. On shift work, the Job Steward shall work no more than the shift hours. There shall be a Job Steward on each shift who shall be appointed by the Union. There shall be a pre-job conference with the Union before the commencement of any shift work.

ARTICLE V

HOLIDAYS

(A) The contractual holidays are:

New Year's Day	Columbus Day
President's Day	Presidential Election Day
Memorial Day	Thanksgiving Day
Independence Day	Day after Thanksgiving
Labor Day	Christmas Day

(B) It is further agreed that no work shall be performed on Sundays or Legal Holidays, except in the case of emergency or necessity, and that no work shall be performed then unless permission is granted by the District Council on the previous workday, stating location of building where work is to be performed and the number of workers required. DOUBLE TIME SHALL BE PAID FOR ALL WORK ON SUNDAYS, AND LEGAL HOLIDAYS, except as otherwise noted. Emergency work, INVOLVING DANGER TO LIFE AND PROPERTY, may be performed without permission from the District Council.

(C) The listed Holidays are to be non-paid holidays except for the General Foreman, Foreman and First and Second Year Apprentices who shall be paid on a weekly basis (inclusive of holidays).

(D) In all cases, the Holidays referred to shall be observed on the day and date established by the State of New York. When permission is granted to work on such Legal Holidays, double time shall be paid.

(E) Except as provided herein, General Foreman, Foreman and first and second year apprentices shall be employed according to the established work week as provided herein except when due to the exigencies of the situation, Local 2287 grants permission to the Employer to employ apprentices for a period of time of less than a full week. This weekly payroll basis will be followed regardless of whether a holiday falls within the week in question, provided that the individual entitled to weekly pay has been ready, willing and able to work during the week in question.

(F) Employees employed on the last legal working day before Christmas Day and before New Year's Day and who report to work on such days, shall receive three (3) hours' afternoon pay without working. Work performed on the afternoons of said days shall be paid at the double-time rate only. Fringe Benefit Contributions will be payable on the half-holidays referred to above.

(G) When a Legal Holiday, defined herein this **Article**, falls on a Sunday and the following day is declared a Legal Holiday, then double-time shall be paid for all hours worked. If a Holiday is to be worked, the Union shall be notified by noon of the previous work day. No work shall be performed on Labor Day.

ARTICLE VI**WAGE RATES AND FRINGE BENEFITS**

Wage rates and fringe benefit contribution within the bargaining unit shall be determined and/or reallocate by Union at its sole discretion:

TOTAL WAGES & FRINGE BENEFITS - JOURNEYMAN FLOOR COVERERS

	07/01/01	01/01/02	07/01/02	01/01/03
Total package per hr.	\$57.48	\$58.89	\$60.58	\$62.27
	07/01/03	07/01/04	07/01/05	
Total package per hr.	\$65.09	\$67.91	\$70.87	

FOREMAN - \$3.00 PER HR. ABOVE JOURNEYMAN SCALE
 GENERAL FOREMAN - \$6.00 PER HR. ABOVE JOURNEYMAN SCALE

EFFECTIVE DATES WAGE RATE PER HOUR	07/01/01	01/01/02	07/01/02	01/01/03
Journeyman	\$33.68	35.09	35.67	-----
Foreman	\$36.68	38.09	38.67	-----
General Foreman	\$39.68	41.09	41.67	-----

EFFECTIVE DATES WAGE RATE PER HOUR	07/01/03	07/01/04	07/01/05	
Journeyman	\$----	-----	-----	
Foreman	\$----	-----	-----	
General Foreman	\$----	-----	-----	

APPRENTICES

Apprentice wage increases may be deferred for reasons determined by the Joint Apprentice Committee and or it's Training Director by written notice to the Employer.

EFFECTIVE DATES	07/01/01	01/01/02	07/01/02	01/01/03
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WAGE RATE PER HOUR

1 st yr. Apprentice 40%	\$13.47	14.04	14.27	-----
2 nd yr. Apprentice 50%	\$16.84	17.55	17.84	-----
3 rd yr. Apprentice 65%	\$21.89	22.81	23.19	-----
4 th yr. Apprentice 80%	\$26.94	28.07	28.54	-----

EFFECTIVE DATES	07/01/03	07/01/04	07/01/05
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WAGE RATE PER HOUR

1 st yr. Apprentice 40%	\$-----	-----	-----
2 nd yr. Apprentice 50%	\$-----	-----	-----
3 rd yr. Apprentice 65%	\$-----	-----	-----
4 th yr. Apprentice 80%	\$-----	-----	-----

FRINGE BENEFIT RATE PER HOUR
JOURNEYMAN-FOREMAN-GENERAL FOREMAN

EFFECTIVE DATES	07/01/01	01/01/02	07/01/02	01/01/03
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WELFARE	\$ 8.80	8.80	8.80	-----
PENSION	\$ 5.41	5.41	5.91	-----
ANNUITY	\$ 4.70	4.70	5.20	-----
A.J.R.E.I.F.	\$ 0.29	0.29	0.35	-----
VACATION	\$ 4.40	4.40	4.40	-----
SUPPLEMENTAL FUNDS	\$ 0.04	0.04	0.04	-----
U.B.C. & J.A. INT'L	\$ 0.06	0.06	0.06	-----
N.Y.D.C.C. LABORS/MGT.	\$ 0.10	0.10	0.15	-----
TOTAL PER HOUR	\$23.80	23.80	24.91	-----

EFFECTIVE DATES	07/01/03	07/01/04	07/01/05
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WELFARE	\$-----	-----	-----
PENSION	\$-----	-----	-----
ANNUITY	\$-----	-----	-----
A.J.R.E.I.F.	\$-----	-----	-----
VACATION	\$-----	-----	-----
SUPPLEMENTAL FUNDS	\$-----	-----	-----
U.B.C. & J.A. INT'L	\$-----	-----	-----
N.Y.D.C.C. LABORS/MGT.	\$-----	-----	-----
TOTAL PER HOUR	\$-----	-----	-----

FRINGE BENEFIT RATE PER HOUR
1st 2nd 3rd & 4th YEAR APPRENTICES

EFFECTIVE DATES	07/01/01	01/01/02	07/01/02	01/01/03
WELFARE	\$ 8.80	8.80	8.80	-----
PENSION	\$ 2.71	2.71	2.96	-----
ANNUITY	\$ 2.35	2.35	2.60	-----
A.J.R.E.I.F.	\$ 0.29	0.29	0.35	-----
VACATION	\$ 2.20	2.20	2.20	-----
SUPPLEMENTAL FUNDS	\$ 0.04	0.04	0.04	-----
U.B.C. & J.A. INT'L	\$ 0.06	0.06	0.06	-----
N.Y.D.C.C. LABORS/MGT.	\$ 0.10	0.10	0.15	-----
TOTAL PER HOUR	\$16.55	16.55	17.16	-----

EFFECTIVE DATES	07/01/03	07/01/04	07/01/05
WELFARE	\$-----	-----	-----
PENSION	\$-----	-----	-----
ANNUITY	\$-----	-----	-----
A.J.R.E.I.F.	\$-----	-----	-----
VACATION	\$-----	-----	-----
SUPPLEMENTAL FUNDS	\$-----	-----	-----
U.B.C. & J.A. INT'L	\$-----	-----	-----
N.Y.D.C.C. LABORS/MGT.	\$-----	-----	-----
TOTAL PER HOUR	\$-----	-----	-----

The Pension, Vacation and Annuity Fund contribution rates for Apprentices are based upon 50% of the Journeyman rate.

(A) Any person directed to appear at a job site shall be guaranteed two (2) hours pay by the Employer if the employee appears prepared to work prior to starting time of the workday in question. Any employee who has worked for an Employer at a job site shall be deemed to have been directed to report to that job site on the following "workday" unless the employee has been actually directed to report to another job site the preceding

"workday" or laid off the preceding "workday".

A Floor Coverer's work day consists of seven (7) hours. If the said employee does not work seven (7) hours because of personal reasons, the employee then would only be paid for hours actually worked.

(B) Employees covered by this Agreement shall be given one hour's notice before being discharge or laid off, and in either event they shall be fully paid at once in cash, or by company payroll check, under the conditions set forth in this **Article**. This does not apply to any temporary suspension of work for reasons beyond the control of the Employer. A temporary suspension of work, as herein set forth, shall mean a cessation of work which shall not exceed a total of two (2) days. In the event employees are laid off and have not been paid, a check shall be forwarded by special delivery, postmarked the following day, to each employee. When an Employer fails to deliver a check by Special Delivery postmarked the following day, the Employer shall thereafter, during the term of this Agreement, make cash payments of all wages due on the job site at the time of the layoff.

(C) Wages shall be paid weekly on the job before 3:30 p.m., said wages to be paid at the Employer's option, either in cash, in envelopes, upon the outside of which shall be plainly marked the Employer's name, the employee's name and number, Social Security

number, the hours worked and the amount of money enclosed, or by check provided:

1. The check is a payroll or similar type of check, containing above information as on the pay envelope, and that delivery of the checks to the employees shall be made at least on the day preceding a banking day. Any deductions now or hereafter required by law shall also be itemized on the checks when issued.

2. The Employer has agreed to comply with the provisions of **Article XII** relating to bonding. Any deductions from wages now or hereafter required by law shall also be marked on face of pay envelope. If employees are not paid as specified above, double time shall be paid for the pay day between the hours of 3:30 p.m. and 5:30 p.m. and single time for working time thereafter, until paid, not exceeding fourteen (14) hours; provided, however, that the employees report to and remain on the job during the said fourteen (14) hours.

(D) If any check provided by an Employer to an employee covered hereunder is returned by the Employer's bank, the Employer shall, within twenty-four (24) hours of notice of the bank's refusal to make payment, deliver to the employee, at the employee's home, the full amount due the employee in cash as well as fifty (\$50.00) dollars in cash as liquidated damages to reimburse the employee for injuries incurred due to the failure of the Employer's

bank to honor the check.

ARTICLE VII

TRAVELING TIME AND EXPENSE

(A) Employees covered by this Agreement who are sent to work outside of the jurisdiction of Local 2287, and who remain away overnight shall be allowed a minimum of seventy-five (\$75.00) dollars per day (\$45.00 for lodging; \$30.00 for meals), unless equivalent provisions are made by the Employer and they shall also receive actual transportation expenses while traveling between the employee's home and the job site, including the actual cost for meals, mileage and sleeping accommodations. Mileage shall be paid at the maximum Federal Mileage Allowance existing at the time the trip is undertaken. The parties acknowledge that "Travel Expense" outlined in this Agreement are reimbursable employee expenses and, therefore, no deductions of any kind may be made from these monies.

(B) Employees covered by this Agreement who are sent to work outside of the jurisdiction covered by this Agreement and who are required to return to their homes at the end of each day's work, shall receive payment at single time for all time which they travel, provided the Union has been notified.

(C) All traveling time for work outside of the geographical jurisdiction of this Agreement between 8:00 a.m. and 3:30 p.m.,

including Saturdays, Sundays and Contractual Holidays, shall be paid for at the rate of single time.

(D) When employees are ordered to the shop in the morning, to receive instructions or to pick up material, the employee's paid time shall begin at 8:00 a.m. However, when employees are required to report to work at the job location or site, then travel time at single time shall only be paid for that time necessary to travel in excess of a 50 mile radius from the shop.

(E) Where an employee is requested by the Employer to use his/her own car on two (2) or more jobs in one (1) day, for work in the five boroughs of New York City, the employee will receive, for an allowance for use of the car \$9.60 per-day for that service, unless the accumulated railroad fare for the day is in excess of nine and 60/100 (\$9.60) dollars, in which case the Employer shall pay the greater amount plus any parking fees, tolls (substantiated by receipts), and required when transporting such materials.

This payment is in addition to payment for carrying materials in the employee's car, already covered by this Agreement.

ARTICLE VIII

CLASSIFICATION OF INDUSTRY

Individuals, firms and corporations signing this Agreement as Employers shall be defined in three classifications as follows:

1. Contractors
2. Trade Shops
3. Dealers

For the purpose of this Agreement, these are defined as follows:

1. Contractors: Those concerns who are, or may be, employ labor for installation of same direct from the Union or who contract and/or who subcontract for the direct installation of flooring materials and/or other material covered by **Article I** of this Agreement.

2. Trade Shops or Workrooms: Those concerned who contract to perform only the labor of installation of same for Dealers and Contractors only, shall employ in this installation only members of the Union. *

Once an award is given to a TRADE SHOP or WORKROOM from a Contractor or a Dealer, then this same TRADE SHOP or WORKROOM shall not re-subcontract the same award to another TRADE SHOP or WORKROOM who is a non-signatory Contractor to this Agreement. To do so is in violation of this Agreement.

3. Dealers: Those concerns engaged in the selling of Floor and Wall Coverings, and who engage TRADE SHOPS or WORKROOMS for the installation of the materials they sell, agree to contract only to signatory Union Contractors.

ARTICLE IX

JOB REFERRAL

The Employer agrees to report to Local 2287 the location or jobsite of each contract job to be performed twenty-four (24) hours before job start. Repeated non-reporting of jobs will initiate referral of the defaulting Employer through Grievance Procedures provided herein.

(A) The designated representative of the Union, as well as all Business Representatives of Local 2287, shall have access to the job site, warehouse and any other business location of the Employer at all times.

(B) The Employer shall have the right to hire the Foreman.

(C) Nothing in this **Section** shall restrict an Employer's right to discharge an employee for just cause. If the employee so discharged or rejected was obtained from Local Union No. 2287, the employee shall be replaced from Local Union No. 2287 to maintain the ratio established above in **Article IX, Section E**.

(1) The Employer shall serve written notice to Local 2287 and a copy of such notice to the affected employee by certified mail, return receipt requested, to Local 2287, and to the employee postmarked within forty-eight (48) hours of the action taken.

(2) Any employee who has been terminated, regardless of

the reason for termination, must be paid all monies due through the day of the termination, including reimbursement for any outstanding claims for expenses. Failure of the Employer to comply with any provision of this **Section** shall negate the termination or rejection and entitle the employee to be paid as if he was working for that time period until the breach of this **Section** is satisfied.

(3) In any case of rejection or discharge, the Employer shall notify Local 2287, as provided herein, of the time and date of discharge or rejection and shall specify, in writing, the reason(s) therefor.

(4) The Employer shall retain the right to reject any job applicant referred by Local 2287 provided that the Employer can prove reasonable basis for said rejection.

(5) It shall be presumed hereunder that the first person referred to a job site by Local 2287 shall be the Steward. All jobs regardless of what type of agreement they work under shall have a New York District Council of Carpenters certified Shop Steward. The Shop Steward responsibilities are:

- a) Enforce Collective Bargaining Agreement regarding wage & fringe benefit rates.
- b) Protect the jurisdiction of the Carpenter.
- c) Check the quarterly work cards of the Carpenters, insuring that they are up to date.

- d) Be aware that all safety standards of the jobsite are up to par.
- e) Enforce 50-50 manning provisions as addressed in the Collective Bargaining Agreement.
- f) Blow the whistle at the point of work promptly at 8:00 a.m. and at 12:30 p.m., and that it also be mandatory for him to blow the whistle for the end of work, promptly at 12:00 noon and at 3:30 p.m.
- g) Attempt to settle all disputes on the jobsite. Any dispute that is unresolved will be settled by the Business Agent of that jurisdiction.

All New York City District Council certified Shop Stewards shall be allowed to use facilities to fax Shop Steward reports to the Union every week and mail the hard copies to Local 2287. When the Shop Steward has completed his work on behalf of the District Council, he shall perform any work within his trade assigned to him by the Employer. When a signatory Employer wishes to layoff a Shop Steward during a continuous employment, the Employer must notify the Union and have a meeting on the job with the Union within twenty-four (24) hours. If termination takes place, a letter must be sent to the Union.

(6) No Steward may be required to serve as a Leadman or Foreman on the job.

(D) The Union shall establish and maintain an open employment list for the referral for employment of competent and qualified workers.

(1) Applicants for referral through the Union may register provided they have the necessary skill and experience to perform the job. Such skill and experience is presumed in case of:

(a) Journeyman Applicants who have been employed for substantial periods of time in the job applied for within two years prior to the date they seek referral in the geographical area covered by this Agreement;

(b) Apprentices who are currently required to attend the Apprenticeship School; and

(c) Apprentices who have successfully completed the full apprenticeship program.

(2) Other applicants who seek to register for referral must pass a competency test given by a Joint Union-Employer Testing Board to be established under this Agreement. Any applicant who fails to pass the test shall have the right to appeal to an Appeal Board composed of two members appointed by the Association and two members appointed by the Union. Such an appeal must be in writing and addressed to the Union within ten (10) days after the sending of notice of failure. In the event of a deadlock in the Appeal Board, the matter shall be referred to the Arbitrator designated

hereunder.

(E) In selecting applicants from the referral list, the Union shall use the following criteria:

(a) Floor Coverers will be hired by the job referral list at the District Council. The 50/50 rule will be enforced and no special requests can be made to the Union. The Contractor can hire whom he wants on his 50% ratio.

(F) The Employer and the Union shall post in places where notices to employees and applicants for employment are customarily posted, all provisions relating to the functioning of the hiring arrangements.

(G) Unless this Agreement specifically requires the use of a Foreman on a particular job, the Employer may not use an apprentice on the job without first notifying Local Union 2287. When a Foreman is required to be on a job, or the Employer chooses to use a Foreman, the Employer shall maintain a ratio of one apprentice for each four (4) Journeymen employed. A Journeyman may not be substituted for an apprentice in this ratio nor may an apprentice be substituted for a Journeyman without specific permission from Local 2287 permitting such substitution. Once an apprentice is hired in conjunction with a Foreman on a job, he/she shall be retained on the job until its completion unless he/she is discharged for just cause or Local 2287 grants permission, based on

the exigencies of job, to layoff the apprentice.

(H) The Employer shall provide on a monthly basis, in writing, a list of persons employed to perform work within the jurisdiction described in the Agreement, as well as their hours and days worked to Local 2287.

(I) Upon request of a representative of the Union and/or Local 2287, the Employer shall supply a list of jobs and the names and addresses of the persons who worked on each job for the month immediately preceding the request.

ARTICLE X

"GENERAL FOREMAN, FOREMAN, LEAD PERSON

(A) Where a job consists of 1,500 yards of reasonably continuous installation, 15,000 square feet of tile installation or 15,000 linear feet of base installation, a Foreman must be employed.

(B) On each job where there is no working Foreman, the Employer shall appoint an individual to act as lead person. The Employer shall have the responsibility of advising the Steward as to who the lead person is. The lead person shall receive a Journeyman's wages. It will be the function of the lead person, and where there is no working Foreman, to pass directions on to the individuals working pursuant to the terms of this Agreement.

(C) The persons appointed as Steward, if qualified, will have the highest seniority on any particular job. The Steward shall be appointed by the Union and there shall be a Steward for each shift. The Foreman will be the last person laid off from the job-site.

(D) On each job where the Employer employs in excess of twenty (20) people who are covered by this Agreement, it shall retain an individual known as General Foreman, to direct the working force.

ARTICLE XI

FRINGE BENEFIT FUNDS

(A) Every Employer covered by this Agreement shall contribute Employer contributions for each hour worked of all employees covered by this Agreement and employed by said Employer within the territory of this Agreement in the amounts hereinafter specified to the Welfare Fund, Pension Fund, Vacation Fund, Annuity Fund, New York City and Vicinity Labor Management Cooperation Fund, United Brotherhood of Carpenters and Joiners of America Fund, Apprenticeship Journeymen Retraining Educational and Industry Fund, and Supplemental Funds. Each Employer's books and payroll records, including cash disbursement records, shall be made available upon demand of the Trustees at all reasonable business hours.

The Employer realizes that the failure of any Employer to make

the required fringe benefit fund contributions affects the liability of all Employers to this agreement and decreases the benefits available to the covered employees of the Employer. Therefore, the Employer to this Agreement shall make available to the Trustees of the various Fringe Benefit Trust Funds, or their designated auditing representatives, all pertinent books and records, including all cash disbursement records, required for an audit to enable said auditor to ascertain and independently verify that the proper contributions hereunder have been paid and such records will be produced whenever deemed necessary by the Trustees in connection with the proper administration of their fiduciary responsibilities. In order to accomplish this end, it is specifically agreed that should any affiliate or subsidiary Employer as described in this Agreement be involved with the business activities of this Employer that this Employer will make available all the pertinent books and payroll records of such affiliate or subsidiary to the auditor so that a complete audit can be made. The extent of the audit and the determination as to what pertinent records are necessary to complete the audit is in the sole discretion of the Employer/Union Trustees so that they may independently verify that all required contributions have been made and discover the identity of all beneficiaries under the plans that they have been entrusted with for proper administration.

When auditors are sent to audit the books of any Employer, General Contractor, Prime Contractor, Builder or Subcontractor and a definite appointment is scheduled, when the auditor or auditors cannot start at the appointed time and date, and must return, or when valid payroll records are not furnished, then the said Employer, General Contractor, Prime Contractor, Builder or Subcontractor shall be penalized and pay the sum of \$100.00 per auditor, to cover the expense of the auditor or auditors. It shall be a violation of this Agreement for any Employer, bound by this Agreement, to fail to furnish proper records when requested, for the purpose of completing an audit. The Union shall have the right to remove all its members from the offending Employer upon twenty-four (24) hours' notice. If such men who are removed remain on the jobsite during regular working hours, they shall be paid for lost time not to exceed three (3) days' pay.

(B) Contributions to the New York City District Council of Carpenters Welfare Fund, Pension Fund, Vacation Fund, Annuity Fund, New York City and Vicinity Labor Management Cooperation Fund, United Brotherhood of Carpenters and Joiners of America Fund, Apprenticeship Journeymen Retraining Educational and Industry Fund, and Supplemental Funds shall be in accord with this Agreement. The contribution to the Supplemental Funds shall be allocated in the following manner:

Carpenters Relief and Charity Fund
TWO AND ONE - HALF CENTS (\$0.025) PER HOUR

District Council Scholarship Fund
ONE-AND-ONE-HALF CENTS (\$0.015) PER HOUR

The purpose of the Carpenters Relief and Charity Funds is to enable the parties to make charitable donations in the name of the carpentry industry from time to time. Said donations shall be made to duly recognized tax exempt institutions within the meaning of the Internal Revenue Code and to provide emergency assistance to bona fide victims of disaster, catastrophe and community projects for the good of the general public. The contributions shall be included in the payment of the Fringe Benefit Stamp. The Fund shall be administered by two persons, one designated by the Union and the other by the Employer Associations. They shall serve without pay and shall be bonded to the extent required by law. All monies received by the Fund shall be deposited in a bank selected by the two administrators and shall be disbursed only by check signed by both administrators. At least once a year the entire balance of the Fund on hand shall be disbursed to organizations and persons who meet the qualifications set forth above. The administrators shall keep such books or records as may be necessary. Once a year the administrators shall account for all monies received and disbursed.

The Supplemental Funds shall be established in accordance with

applicable law, and any employee's authorization that is required shall be secured by the Union.

It is agreed that all contributions are due and payable to the District Council Fund Office as called for in this Agreement for the other fringe benefit funds and the Employer does hereby authorize said area Fund Office to forward said contributions to the Fund Office in such manner as the Trustees of said fund shall reasonably require.

The parties also recognize their right to be represented on the New York State Carpenters Labor-Management Committee and by the execution of this Agreement the parties authorize the representatives of the participating Employers and Carpenter Unions to designate their respective Union and Employer Trustees hereby waiving all notice thereof and ratifying all actions taken by them within the scope of their authority.

Effective July 1, 1996 the parties to this Agreement recognize the New York City and Vicinity Carpenters Joint Labor Management Cooperation Trust Fund. The Committee will be funded by contributions paid through the Trust Funds Stamp Plan. Said donations shall be made in accordance with all applicable Federal and State Laws pertaining thereto.

The Contractor and the Union acknowledge that they are represented by their duly designated Trustees to administer the

various Fringe Benefit Trust Funds provided for in this contract. Because of the various liabilities and responsibilities placed upon all parties to this Agreement, including all Employers and Union representatives and their respectively designated Trustees, each Employer hereby agrees that the Fringe Benefit Fund Trustees shall have the necessary powers to fulfill their fiduciary obligations in order to fully protect each Contractor signed to this Agreement and their employee-beneficiaries under the respective fund plans.

(C) When any Employer sends its employees to work in any locality outside the geographical jurisdiction as listed in **Article II** of this Agreement, it shall forward all fringe benefits for the members of Local Union 2287 to the New York City District Council of Carpenters Fringe Benefit Funds' office, and credit same to the Employer's account where required; provided, however, should the Employer be required by the Collective Bargaining Agreement with the District Council and/or Local Union outside the jurisdiction of the New York District Council to make contributions and upon proof of such payment, deduct the same from the total contributions for the reporting period due to the New York District Council.

(D) Each Employer shall be bound by all of the terms and conditions of the Agreements and Declarations of Trust, creating the Welfare Fund, Pension Fund, Vacation Fund, Annuity Fund, New York City and Vicinity Labor Management Cooperation Fund, United

Brotherhood of Carpenters and Joiners of America Fund, Apprenticeship Journeymen Retraining Educational and Industry Fund, and Supplemental Funds, as amended, and by all By-Laws adopted to regulate each of said Funds. The Trustees of the Funds shall secure the approval of the Treasury Department under the applicable provisions of the Internal Revenue Code and shall amend the same, if necessary, to secure such approval, so as to qualify the Employer-contributions as deductions for Federal Income Tax purposes.

(E) It is agreed that no contributions to any of the Funds as specified in this **Article** shall be required on the premium portion of wages. For the purposes of these **Sections** only, all hours worked shall be regarded as straight-time hours.

(F) Whenever the Employer is in default in payments to the Fringe Benefit Funds referred to in this **Article** of the Agreement, and reasonable notice of not less than seventy-two (72) hours of such default is given to the Employer, if the payments are not made, the Union may remove its members from the work of such Employer. If such members who are removed remain at the jobsite during regular working hours, they shall be paid for lost time not to exceed three (3) days' pay.

(G) In the event that formal proceedings are instituted before a court of competent jurisdiction by the trustees of a

Benefit Fund or Funds to collect delinquent contributions to such Fund(s), and if such court renders a judgment in favor of such Fund(s), the Employer shall pay to such Fund(s), in accordance with the judgement of the court, and in lieu of any other liquidated damages, costs, attorney's fees and/or interest, the following:

- (1) the unpaid contributions; plus
- (2) interest on the unpaid contributions determined at the prime rate of Citibank plus 2%; plus
- (3) an amount equal to the greater of --
 - (a) the amount of the interest charges on the unpaid contributions as determined in (b)
"above, or
 - (b) liquidated damages of 20% of the amount of the unpaid contributions; plus
- (4) reasonable attorney's fees and costs of the action;
and
- (5) such other legal or equitable relief as the court deems appropriate.

In the event that proceedings are instituted before an arbitrator under **Section H** of this **Article** to collect delinquent contributions to Benefit Fund or Funds, and if such arbitrator renders an award in favor of such Fund(s), the arbitrator shall be empowered to award such interest, liquidated damages, and/or costs

as may be applicable under the Agreement and Declaration of Trust establishing such Fund(s).

(H) Should any dispute or disagreement arise between the parties hereto, or between the Union and any Employer-member signatory hereto, concerning any claim arising from payments to the Fund of principal and/or interest which is allegedly due, either party may seek arbitration of the dispute before the impartial arbitrator designated hereunder by filing a notice of intent to arbitrate in writing with said impartial arbitrator, and serving a copy of said notice on the Employer or the Union, as the case may be. Unless a waiver is mutually agreed to in writing by the parties hereto, a hearing shall be convened as soon as practicable and the arbitrator shall submit his award within twenty (20) days after the close of the hearing. The arbitrator shall have full and complete authority to decide any and all issues raised by the submission and to fashion an appropriate remedy including, but not limited to, monetary damages. The arbitrator's award in this regard shall be final and binding upon the parties hereto and the individual Employer, if any, and shall be wholly enforceable in any court of competent jurisdiction. The cost of the arbitration, including the fees to be paid to the arbitrator shall be included in the award and shall be borne by the losing party.

Roger Maher, Joseph W. Lipowski, Robert Silagi or Robert

Herzog is hereby designated as impartial arbitrator(s) hereunder.

The agreement of the parties to submit said matters regarding the payment of contributions to an arbitrator does not excuse the Employer from any statutory, civil or criminal liability which may attach to his actions under Municipal, State or Federal law. The submission of a matter to arbitration is in no way meant to affect the right of the Union to remove its members from an Employer's premises, as provided for in this Agreement.

(I) A stamp plan has been established which provides for the payment of contributions to the Welfare Fund, Pension Fund, Vacation Fund, Annuity Fund, New York City and Vicinity Labor Management Cooperation Fund, United Brotherhood of Carpenters and Joiners of America Fund, Apprenticeship Journeymen Retraining Educational and Industry Fund and Supplemental Funds pursuant to a consolidated stamp, including the filing of the monthly summary report with the Fund office. The Employer will comply with procedures established by the Benefit Fund Trustees to assure that the employee receives the consolidated stamp together with his/her pay. The stamps shall be purchased through facilities established by the Bank of New York or such other agencies authorized by the Trustees.

ARTICLE XII

BONDING

Section 1

An Employer is required to post a bond as set forth in **Article XII, Section 5** of this agreement to guarantee payment of contributions to the Funds as provided for in **Article XI**.

Section 2 - Employer's Acknowledgment of Prompt Payments to the Funds

The Employer further acknowledges and the parties agree that prompt payment of fringe benefit contributions is essential to the proper administration of the Agreement, the appropriate funding and actuarial soundness of the Funds and the timely payment of benefits to participating employees. The Employer agrees to comply with the Funds' Collection Procedures, as may be adopted by the Board of Trustees, including responding to information and other requests on a timely basis, promptly including but not limited to permitting and cooperating with an audit. When a signatory Employer owes to the Benefit Funds an amount greater than the face amount of its bond, the bond must be increased to cover such indebtedness. An Employer determined to be delinquent shall be required to make weekly cash payments to the Funds by certified check to cover on-going contribution obligations. If this is not done, the Union at its discretion may remove all of its members from the employ of

that Employer.

Section 3 - Job Action for Non-Complying Employer

The Employer agrees to provide a bond in such amounts as provided for here in **Article XII** relating to Bonding before commencing any work. In the event that the Employer fails to provide such bond within seven (7) days of commencing work, the District Council may consider the Employer in default and remove its members, upon reasonable notice, from each of the Employer's job sites. If the members remain on the site, they shall each receive no more than three (3) days of wages and fringe benefit contributions during such job action.

Section 4 - Personal Liability of Shareholders, Officers, Other Individuals

(A) In the event that the Employer fails for any reason to satisfy the Bonding requirement provided for here in **Article XII**, the Employer agrees that its shareholders, officers, and individuals who are empowered to execute agreements, sign checks and pay fringe benefit contributions shall be personally liable, jointly and severally, for all unpaid amounts due and owing to the Funds, including but not limited to interest, liquidated damages, auditors' costs, attorneys' fees and costs to collect the same.

(B) No Limitations

This Section shall in no way relieve or excuse any Employer of

the obligation to provide the required Bond regardless of the business form under which the Employer does business, nor shall this provision limit the personal liability of any corporate officers or shareholders based on operation of law.

(C) Application to Non-Complying Employer

Any Employer commencing work in violation of this **Section** shall be in violation of **Article XI** relating to the Funds.

Section 5 - Bond Amount

The Funds' Trustees shall determine the amount of Bond the Employer is required to provide, but such amount shall be no less than an amount equal to sixty days of estimated contributions.

The Employer shall provide a Bond in the minimum amounts as follows:

<u>Number of Employees</u>	<u>Bond Amount</u>
1-3	\$ 10,000.00
4-7	\$ 15,000.00
8-15	\$ 20,000.00
16-20	\$ 30,000.00
21-25	\$ 75,000.00
26 or more	\$125,000.00

The Funds may seize the bond if the Funds determine that the Employer has failed to make required contributions to the Funds or if the Employer has violated the Funds' Collection Procedures. The amount of the bond shall be subject to increase or decrease, in the discretion of the Trustees, depending on the number of employees employed on a particular job site or period.

ARTICLE XIII

MISCELLANEOUS CONDITIONS

(A) Only persons covered by this Agreement may perform work covered within the jurisdiction of this Agreement.

(B) If employees who are subject to this Agreement are withdrawn upon the orders of their International Officers or of the Union, or of Local 2287, it shall not be considered a violation of this Agreement.

(C) Reimbursement for the loss of tools or clothing shall be paid not to exceed:

Tools.....	\$600.00 (finish)
	\$500.00 (concrete)
Overcoat.....	\$150.00 *
Other Clothing.....	\$150.00
Shoes.....	\$125.00

All Floor Coverers will be required to carry a full set of tools at all times. The Employer shall furnish a suitable tool and clothing locker. The locker shall have the door hinged in such a way that the hinges cannot be taken off while the door is closed without breaking the door.

(D) The Employer agrees that it will be responsible and liable for payments of all wages and fringe benefits for any Subcontractor who is engaged by the Employer to perform work that falls within the jurisdiction, as set forth herein, of the District Council.

(E) It shall be mandatory upon the General or Prime Contractor or Builder to notify the District Council within thirty (30) days of an award and prior to the start of work, that a subcontract necessitating employment of members of the District Council has been awarded. Included in this notification shall be the name and address of such Subcontractor and location of job site.

(F) Each party hereto agrees that neither the Union nor any Employer will discriminate, in any manner, against any individual by reason of race, color, creed, national origin, citizenship, age, sex, or affectional preference, Union membership or non-membership, or Union activity as defined in applicable federal, state or local laws. For the purposes of this **Article**, "citizenship status" means the citizenship of any person, or the immigration status of any person lawfully residing in the United States who is not a citizen or national of the United States.

(G) Any employee required to work during the lunch period shall be paid one-half ($\frac{1}{2}$) hour at the overtime rate and shall be allowed one-half ($\frac{1}{2}$) hour to eat lunch. All employees at the job-site are required to take their one-half ($\frac{1}{2}$) hour lunch. Permission to work through lunch must be given by the Employer.

(H) When an Employer enters into a Joint Venture with an Employer who is not bound by this Agreement, then said Joint-

Venturers shall sign an Agreement as Joint Venturers with the Union. Each joint venture shall comply with the Bonding provisions in **Article XII**.

(I) Each Joint-Venturer shall furnish a new Surety Bond covering said Joint Venture or furnish the Union with a Rider from their respective insurance carriers, confirming that their respective Surety Bond protects the Fringe Benefit Funds during the period of said Joint Venture.

(J) Where, for the benefit of an Employer, an employee must cross a body of water to reach the jobsite and there is no public transportation available to said site, then it shall be the duty of the Employer to provide adequate safety and comfort for the employee's transportation. The Employer shall protect such employee under a policy of public liability insurance or any other insurance required by law for any public conveyance. Such certificate shall be posted in a conspicuous place, on any conveyance used by the Employer. Should such transportation, whether public or private, require extraordinary fare, such fare shall be paid by the Employer. The employee shall not leave the shore opposite the jobsite earlier than 8:00 a.m. and shall return to the same shore not later than 3:30 p.m.

(K) There shall be no loss in wage time to an employee on the day of injury when medical attention is required to said employee

while working on the Employer' job, provided that the employee submits a note from the Doctor or Clinic, stating that the employee cannot work that day.

(L) The Employer agrees that it will not subcontract any work covered by this Agreement which will in any way, either directly or indirectly result in a lessening or lowering of the payment of wages, fringe benefits or working conditions provided herein.

(M) All work covered by this Agreement shall be contracted or subcontracted only to an Employer who is signatory to a Collective Bargaining Agreement with the Union. The parties hereto mutually agree with respect to such work falling within the scope of this Agreement that is to be done at the site of construction, alteration, maintenance, or repair of any building, structure, or other works, that if the Employer should contract or subcontract any of the aforesaid works falling within the trade jurisdiction of the Union as set forth herein, said Employer agrees that it will not sub-contract any work covered by this Agreement which will in any way, either directly or indirectly result in a lessening or lowering of the payment of wages, fringe benefits or working conditions provided herein.

(N) The Contractor further agrees that, upon receiving written notice from the Union that its Subcontractor is delinquent in payment of wages, or the payment of any of the fringe benefits

called for herein, such Contractor will withhold from any Funds in its possession which are or which may be due to said Subcontractor until it receives further notice from the Union that the Subcontractor delinquencies have been paid.

(O) In order to protect and preserve for the employees covered by this agreement all work historically and traditionally performed by them, and in order to prevent any device or subterfuge to avoid the protection or preservation of such work, it is hereby agreed that if and when the Employer shall perform any work on a job site of the type covered by this agreement as a single or joint Employer (which shall be interpreted pursuant to applicable NLRB and judicial² principles) within the trade and territorial jurisdiction of the Union, under its own name or under the name of another, as a corporation, sole proprietorship, partnership, or any other business entity including a joint venture, wherein the Employer (including its officers, directors, owners, partners, or stockholders) exercises either directly or indirectly (such as through family members) controlling or majority ownership management or control over such other entity, the wage and fringe benefit terms and conditions of this agreement shall be applicable to all such work performed on or after the effective date of this Agreement. The foregoing shall not be interpreted to apply to separate Employer situations. It is not intended that this **Article**

be the exclusive source of rights or remedies which the parties may have under State or Federal laws.

(P) The following listed tools, which are considered as Shop Equipment, shall be furnished by the Employer when decided by the Employer that they are necessary for a specific job:

1. Power Stretcher
2. Tile Cutter
3. Blow Torch Tank or Tanks
4. Electric Drill
5. Roller - except Hand or Wall
6. Cleaning Equipment
7. Electric Stapler
8. Spray Machine or Mask

(Q) The Employer agrees to abide by all OSHA Regulations when supplying employees with safety equipment and ventilating work areas.

(R) If an employee is required to use Powder Actuated tools he is to be qualified to use said Powder Actuated Tools by securing from the Tool Manufacturer an Operator's Card or similar proof of qualification, and the Union shall cooperate with the Employer and Tool Manufacturer in having the employee expeditiously qualified. No Powder Actuated Tools shall be used that have not been previously approved by the State Board of Standards and Appeals.

(S) There will be no quotas imposed on Floor Coverers working on a jobsite.

(T) Any Employer found guilty of offering cash to Floor

Coverers for hours worked shall pay a fine of five thousand (\$5,000.00) dollars to the Carpenter's Relief and Charity Fund after he has paid monies that were due to the Benefit Funds.

(U) All Floor Coverers will be allowed a ten minute coffee break in the morning. This will also be allowed in the afternoon when working 40 hours.

(V) Every signatory Employer party to this contract shall notify the District Council on its specified form, by fax, certified mail, or telephone, of the awarding of any contract on which any of the work described in **Article I** hereof shall be performed by said Employer or a Subcontractor. Said notice shall include the location of the job, the name and address of the Contractor or Subcontractor involved, and the identity of the General Contractor. The District Council shall then provide the Employer with a specified job identification number for that specific job. This identification number will be utilized for the District Council job referral list, Steward's reports, and summary/remittance reports. In addition, the Foreman, General Foreman and/or the first employee is required to report his/her presence on said jobsite and obtain this identification number.

Failure to comply with this **Section**, shall be a breach of this Agreement and shall authorize the Union to remove its members from any job on which said Contractor or Subcontractor has not complied

with this notice. The aforesaid notice shall be given within thirty (30) days of the award of a contract, and in any event, prior to the commencement of work, or after the cessation of work, prior to the recommencement thereof. It is understood that the provisions of this **Section** will be strictly enforced by the Employer, as set forth above, a pre-job conference will be held, if one is requested by the Union. The Employer shall fax a notice of job closure to the District Council to signify the completion of the job.

ARTICLE XIV

GRIEVANCE PROCEDURE

Section 1. All complaints, disputes and differences concerning the application, interpretation, effect, purpose or breach of any term or condition of this Agreement, or in the event there shall exist any claim, demand, dispute or controversy between the parties hereto, excluding the merits of jurisdictional dispute, i.e., a dispute with another trade over the assignment of work, the parties hereto shall first attempt to settle and adjust such dispute, claim, demand or controversy by negotiation.

Section 2. Any grievance not resolved shall be submitted to arbitration before Roger Maher, Robert Silagi, Joseph W. Lipowski or Robert Herzog who shall serve as permanent arbitrator(s)

hereunder. The arbitrator shall have the right to conduct an ex-parte hearing in the event of the failure of either party to be present at the time and place designated for the arbitration, and shall have the power to render a decision based on the testimony before him at such hearing. The decision of the arbitrator shall be final and binding upon both parties and may be entered as a final decree or judgement in the Supreme Court of the State of New York or in a court of appropriate jurisdiction in any state where such decision shall be rendered. The costs of the arbitration, including the arbitrator's fee shall be borne equally by the Employer and the Union.

Section 3. It is the intent of the parties hereto that all disputes between them, both within and outside of the Agreement, shall be submitted to arbitration and that no defense to prevent the holding of the arbitration shall be permitted. Service of any documents or notice referred to above, or service of any notice required by law in connection with arbitration proceedings may be made by registered or certified mail. A post office receipt shall be conclusive evidence of proper service if mailed to the address designated by the Employer when it signed the agreement. If certified or registered mail is refused or not picked up, ordinary mail shall be deemed sufficient service provided that it is forwarded to the address of record contained in this agreement.

Section 4. Upon the confirmation of the arbitrator's award, the prevailing party shall, or on any appeal therefrom, be entitled to receive all court costs in each proceeding as well as reasonable counsel fees.

ARTICLE XV

GREATER NEW YORK FLOOR COVERERS INDUSTRY &

A.J.R.E.I. PROMOTIONAL FUND

The Employer covered shall contribute to the Greater New York Floor Coverers Industry Promotional Fund an amount equivalent to one-half ($\frac{1}{2}$) of one (1%) percent of the employee's hourly wages and fringe benefits for every hour worked by the employees of said Employers, whenever engaged in Floor Covering whatsoever.

The Benefit Fund Office of the District Council shall advise the Union and the GREATER NEW YORK FLOOR COVERERS INDUSTRY PROMOTIONAL FUND whenever an Employer shall be in default in the payment of contributions due the GREATER NEW YORK FLOOR COVERERS INDUSTRY PROMOTIONAL FUND.

Each Employer shall be bound by all the terms and conditions of the Agreement and Declaration of Trust by and between each signatory of this Agreement, creating the GREATER NEW YORK FLOOR COVERERS INDUSTRY PROMOTIONAL FUND and all By-Laws adopted to regulate said Fund.

All Employer-contributions to the GREATER NEW YORK FLOOR COVERERS INDUSTRY PROMOTIONAL FUNDS shall be remitted monthly with the stamp plan contributions for the Benefit Fund. The bank servicing the Benefit Funds shall deliver all such contributions to the GREATER NEW YORK FLOOR COVERERS INDUSTRY PROMOTIONAL FUNDS, after verifying that the amount of each such contribution has been correctly computed by the Employer.

The GREATER NEW YORK FLOOR COVERERS INDUSTRY PROMOTIONAL FUNDS shall reimburse the Carpenters Fringe Benefit Funds for all expenses incurred by it.

The Fund and all payments thereunder may not be used for lobbying in support of anti-labor legislation and for any purpose contrary to the interest of the District Council nor for subsidizing of any Contractor during periods of work stoppages or strike.

There shall be established by this Agreement, a Joint Review Committee, consisting of two (2) members appointed by the District Council, and two (2) members appointed by the GREATER NEW YORK FLOOR COVERERS INDUSTRY PROMOTIONAL FUNDS, whose duties, among other things, shall be to periodically review any increase or decrease in the amount of the Surety Bonds as the case may be, or in the event of a default in the terms and conditions of the Collective Bargaining Agreement by a Contractor, signatory to this

Agreement, when engaged in Floor Covering as defined in **Article I**, where a new, different, or additional Bond is required or necessary, and to perform such other duties and services as may serve to upgrade and maintain the standards of proficiency of Floor Covering, and to create greater work opportunities for members of the District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America.

In the event an Employer does not wish to be bound to contribute to the Greater New York Floor Coverers Industry Promotional Fund, as set forth in this **Article** hereof, then said Employer hereby agrees to be bound to contribute an amount equivalent to one-half ($\frac{1}{2}$) of one (1%) percent of the employee's hourly wages and fringe benefits for every hour worked by the employees of said Employer, whenever engaged in Floor Covering whatsoever, to the Apprenticeship, Journeyman Retraining, Educational and Industry Promotional Fund. This contribution is in addition to the contribution provided for in **Article VI** of this Agreement.

ARTICLE XVI

SAVINGS CLAUSE

If the Courts should decide that any clause or part of this Agreement is unconstitutional or illegal, or should any clause or

part of this Agreement be found contrary to present or future laws, it shall not invalidate the other portions of this Agreement, it being the sole intent and purpose of this Agreement to promote peace and harmony in the Industry as permitted by Law.

ARTICLE XVII

EXPIRATION AND AUTOMATIC RENEWAL

This Agreement shall be binding on the Employer and the Union, their successors and assigns. The duration of this Agreement shall continue until July 1, 2006 and shall be renewed automatically for one year intervals thereafter unless notice to the other at their last known address has been provided by either party by certified and regular mail no more than ninety (90) days nor no less than sixty (60) days before the contract expiration that such party seeks to negotiate a new contract or modify or amend this Agreement through negotiations. Once negotiations have commenced, neither party will seek to alter unilaterally the terms or conditions of employment of employees covered by this Agreement until such terms have been changed by execution of a newly negotiated agreement.

ARTICLE XVIII

EFFECTUATING CLAUSE

The parties hereto make and enter into this Agreement, in witness whereof, we, their duly authorized and empowered representatives, have hereunto set our hands and seal this 01st day of July, 2001.

For The Employer: THREE GUYS FLOOR COVERING WORKROOM INC.

By: _____
(Officer's Signature & Title) (Print Name)

For the Union:

DISTRICT COUNCIL OF NEW YORK CITY
AND VICINITY OF THE UNITED BROTHER-
HOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO.

By: _____

The party of the First Part, herein referred to as the Employer, signatory to this Agreement, hereby acknowledges receipt of copies of the Agreement and Declaration of Trust of the New York City District Council of Carpenters Welfare Fund; Pension Fund; Apprenticeship, Journeymen Retraining, Educational and Industry Fund; United Brotherhood of Carpenters and Joiners of America Fund; New York City and Vicinity Carpenters Labor Management Fund; Supplemental Funds; Annuity Fund; and Vacation Fund.

By: _____
(Officer's Signature & Title) (Date)

Acknowledgment of Promotional Fund Contribution:

Apprenticeship, Journeyman Retraining, Educational and Industry Promotional Fund

By: _____

or

Greater New York Floor Coverers Industry Promotional Fund

By: _____

In the Matter of:

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THE NEW YORK CITY DISTRICT COUNCIL
OF CARPENTERS PENSION FUND, NEW
YORK CITY DISTRICT COUNCIL OF
CARPENTERS WELFARE FUND, NEW
YORK CITY DISTRICT COUNCIL OF
CARPENTERS VACATION FUND, NEW
YORK CITY DISTRICT COUNCIL OF
CARPENTERS ANNUITY FUND, NEW
YORK CITY DISTRICT COUNCIL OF
CARPENTERS APPRENTICESHIP,
JOURNEYMAN RESTRAINING,
EDUCATIONAL AND INDUSTRY
FUND, NEW YORK CITY DISTRICT
COUNCIL OF CARPENTERS CHARITY
FUND, and THE NEW YORK CITY AND
VICINITY CARPENTERS LABOR-
MANAGEMENT CORPORATION, By
MICHAEL J. FORDE and PAUL O'BRIEN,
as Trustees,

Petitioners,

-against-

THREE GUYS FLOOR COVERING
WORKROOM, INC.,

Respondent.

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PRELIMINARY STATEMENT

This Memorandum of Law is submitted in support of the application of
Respondent THREE GUYS FLOOR COVERING WORKROOM, INC.'s application to
dismiss the arbitration proceeding herein.

**RESPONDENT'S
MEMORANDUM OF LAW IN
SUPPORT OF ITS APPLICATION
TO DISMISS THE ARBITRATION**

BACKGROUND

On or about May 17, 2007, THE NEW YORK DISTRICT COUNCIL OF CARPENTERS BENEFIT FUNDS (hereinafter referred to as the "FUND") served two (2) Notices of Intention to Arbitrate alleging that the FUND was entitled to delinquent fringe benefit contributions for the period of 7/1/02 through 11/11/04 in the sum of \$100,038.22 and for the period 11/12/04 through 7/6/06 in the sum of \$65,079.86. (See Joint Exhibits "3B and 4B(b)") Thereafter, on or about August 20, 2007, the FUND amended its Final Audit Report to seek \$25,722.79 for the period 7/1/02 through 11/11/04 and \$14,238.52 for the period 11/12/04 through 7/7/06. (See Exhibits "F1" and "F2")

Then, on or about October 18, 2007, the FUND, once again, amended its "Final Order Report" now seeking \$90,829.14 for the period 7/1/02 through 11/11/04 and \$58,150.99 for the period between 11/11/04 through 7/7/06. (See Exhibit "F7(a)" and "(b)")

It is undisputed that the parties are bound by a Collective Bargaining Agreement entitled the "Independent Resilient Floor Coverers Agreement" between the Respondent and THE DISTRICT COUNCIL OF NEW YORK CITY AND VICINITY OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO. The Agreement covers the period July 1, 2001 through June 30, 2006. (See Joint Exhibit "1")

ARGUMENT

The position taken by the FUND is that Salvatore Piccarillo and Robert Gonzalez as principals of THREE GUYS FLOOR COVERING WORKROOM, INC. are required to make contributions for a minimum of twenty-eight (28) hours of work per week whether or not they work those hours or not. In support of this position, the FUND has submitted in evidence as FUND'S Exhibit "F5a" and "F5b," two (2) Member-Employer Addendums, each providing that pursuant to the Collective Bargaining Agreements dated March 10, 1993 and November 19, 1993 between the FUND and the Respondent, that the Respondents, as principals, would pay weekly contributions for a minimum of twenty-eight (28) hours per week to the FUND. However, these Member-Employer Addendums only apply to the Collective Bargaining Agreements dated March 10, 1993 and November 19, 1993 and not to the Collective Bargaining Agreement referred to above and marked Joint Exhibit "1" which covers the period July 1, 2001 through July 30, 2006. The FUND has admitted that no Member-Employer Addendum was signed by the Respondent for the relevant period. Additionally, a review of the Collective Bargaining Agreement (Joint Exhibit "1") reveals that there is no language in the Agreement requiring the minimum of twenty-eight (28) hours per week of contributions to the FUND by the principal-employer.

In an extremely telling letter dated August 6, 2007 (Employer Exhibit "2"), the FUND indicates that its policy regarding benefit contributions for principals, effective

September 1, 2006, is that principals who are union members and have executed a Member-Employer Participation Agreement with the FUND are now required to contribute twenty-eight (28) hours per week in benefits in order to be eligible to participate in the benefit fund. (Annexed hereto and made a part hereof and marked Exhibit "1" is a copy of said letter dated August 6, 2007, along with a proposed participation Agreement.) The August 6, 2007 letter refers back to an August 24, 2006 letter allegedly sent by the FUND to the Respondent at that time indicating the change effective September 1, 2006. (Annexed hereto and made a part hereof and marked Exhibit 2 is a copy of said August 24, 2006 letter previously marked as Employer Exhibit "3".)

It is respectfully submitted that reasonable contract interpretation based on the documents presented in this case clearly reveals that since there was no Member-Employer Addendum signed in connection with the July 1, 2001 contract, that the minimum twenty-eight (28) hour term did not apply to Respondent until September 1, 2006. Since the audit in this case runs between July 2002 and June 2006, the FUND can point to no written authority compelling the Respondent to pay a minimum of twenty-eight (28) hours per week contributions during the relevant term. One would ask, why would the FUND require a New Member Participation Agreement if there had always been a rule requiring the minimum twenty-eight hours (28) contribution?

Additionally, as proof that the FUND never intended to charge the Respondent the

minimum twenty-eight (28) hour contribution, the Audit conducted by the FUND for the period 1/1/00 to 6/30/01 reveals no requirement of the twenty-eight (28) hour minimum contribution. (Annexed hereto and made a part hereof and marked Exhibit "3" is a copy of said Audit from 1/1/00 through 6/30/01.)

CONCLUSION

By reason of the premises, the FUND has presented no written evidence requiring the Respondent to make the contributions as requested in the Amended Final Audit. As such, since the Arbitration is based upon this Audit, it must be dismissed based upon failure of proof.

Dated: Garden City, New York
December 19, 2007

Respectfully submitted,

WEINSTEIN, KAPLAN & COHEN, P.C.
Attorneys for Respondent THREE GUYS
FLOOR COVERING WORKROOM, INC.

By: 

ROBERT N. COHEN

1325 Franklin Avenue
Suite 210
Garden City, NY 11530
(516) 877-2525

TO: ROBERT HERZOG, ESQ.
Arbitrator
P.O. Box 25
Hillsdale, New Jersey 07642

STEVEN C. KASARDA, ESQ.

Attorney for Petitioner

NEW YORK DISTRICT COUNCIL OF CARPENTERS BENEFIT FUNDS

395 Hudson Street

New York, NY 10014-3695

NEW YORK DISTRICT COUNCIL OF CARPENTERS

UNION TRUSTEES

Michael J. Forde
Chairman
Peter Thomassen
Denis Sheil
Lawrence D'Errico
John E. Greaney
Charles Harkin

BENEFIT FUNDS

Stuart R. GraBois
Executive Director

395 Hudson Street
New York, N.Y. 10014
Telephone: (212) 366-7300
Fax: (212) 366-7444

MANAGEMENT TRUSTEES

Paul O'Brien
Co-Chairman
George ...
Richard ...
David T. ...
Kevin M. ...
Joseph C. ...

TO: Contributing Employers to the
Carpenters Benefit Funds

DATE: August 06, 2007

FROM: Board of Trustees

SUBJECT: Benefit Contributions for Union Members who are Principals and/or Non-
Classified Workers

This letter is to serve as a follow-up to the letter mailed August 24, 2006.

The Funds' policy regarding benefit contributions for principals (owners) and non-classified workers (including superintendents, project managers, estimators etc.) as determined by the Board of Trustees, effective September 1, 2006 is as follows:

1. Effective September 1, 2006, principals (owners) and/or non-classified workers (including superintendents, project managers, estimators etc.) who are union members wishing to participate in the NYDCC Benefit Funds program must execute a Member Employer participation agreement.
2. Effective September 1, 2006, with respect to principals (owners) who are union members and have executed a Member Employer participation agreement with the Funds, the minimum required contribution is twenty-eight (28) hours per week.
3. Effective September 1, 2006, with respect to contractors wishing to purchase full benefit for their non-classified workers (including superintendents, project managers, estimators etc.) who are union members and have executed a Member Employer participation agreement with the Funds, the required contributions are for the same number of hours as carpenters in the same industry, e.g., 35 or 40 hours per week.

There are no exceptions to these rules and the Funds will have no alternative other than to seek interest and damages if full payments are not timely made.

PARTICIPATION AGREEMENT

This Participation Agreement (the "Agreement"), effective the first day of September, 2006, is by and between the New York City District Council of Carpenters Annuity Fund (the "Annuity Fund"), the New York City District Council of Carpenters Apprenticeship Fund (the "Apprenticeship Fund"), the New York City District Council of Carpenters Pension Fund (the "Pension Fund"), the New York City District Council of Carpenters Welfare Fund (the "Welfare Fund"), the New York City District Council of Carpenters Vacation Benefit (the "Vacation Benefit"), the New York City District Council of Carpenters Labor Management Corporation (the "Labor Management Corporation") (collectively, the "Funds") and THREE GUYS FLR COVG WKRM INC (the "Employer").

I. PARTICIPATION BY EMPLOYER

By signing, the Employer agrees to be bound by this Agreement to participate in the Funds by enrolling in all the Funds either: (check the box which applies)

- ☐ the Employer's Principal-Owners; or
- ☐ the Employer's Principal-Owners/Non-Classified Worker Employees (as defined in Section II)

The Employer shall make contributions on behalf of the individuals above (the "Participants"), as called for in this Agreement.

It is intended that the Participants shall continue to participate in the Funds indefinitely. Notwithstanding the prior sentence, participation in the Funds shall be irrevocable by the Employer during the term of the collective bargaining agreement between the Employer and the New York City District Council of Carpenters (the "Union") governing the participation of the Employer's collectively bargained carpenter employees in the Funds (the "Applicable Collective Bargaining Agreement").

The Employer further agrees to be bound by all the terms and conditions of the Agreements and Declarations of Trusts (the "Trusts") establishing the Funds, by the governing plan documents (the "Plans"), by all rules and regulations adopted to regulate the Funds, and by any and all other instruments necessary and proper to administer the Funds (collectively, the "Funds' Governing Documents"). The Funds' Governing Documents are hereby made part of this Agreement and shall be considered as incorporated herein. To the extent the terms and conditions of this Agreement are inconsistent with the terms and conditions set forth in the Funds' Governing Documents, the terms and conditions of the Funds' Governing Documents shall control.

The Employer further agrees and consents to the employer-designated Trustees of the Board of Trustees of the Funds (the "Trustees") to serve as such in accordance with the aforementioned Trusts.

II. ELIGIBILITY OF EMPLOYEES FOR PARTICIPATION

A Principal-Owner and, if applicable, Non-Classified Worker Employee of the Employer shall become eligible to participate in the Funds in accordance with the eligibility rules of the applicable plan document. Notwithstanding the prior sentence, a Principal-Owner and, if applicable, Non-Classified Worker Employee shall only be eligible to participate in the Funds if an Applicable Collective Bargaining Agreement exists between the Union and the Employer. Notwithstanding the prior sentence, this Agreement shall not govern Employer contributions to the Funds on behalf of employees who are included in a unit of employees covered by a collective bargaining agreement between a labor organization and the Employer providing for employee pension or welfare benefits.

For purposes of this Agreement, the term "Principal-Owner" shall mean a principal (owner). The term "Non-Classified Worker Employee" shall mean a non-classified worker of the Employer. Non-classified workers include superintendents and project managers.

The Employer agrees to enroll in the Funds only Principal-Owners and, if applicable in accordance with Section I, Non-Classified Worker Employees, and shall make contributions on behalf of all such individuals.

The Employer further agrees to provide to each Fund written notice within thirty (30) days after any Participant enrolled in the Funds: (a) dies; (b) is terminated from employment; (c) ceases to be eligible to participate in the Funds; or (d) otherwise ceases to be a Principal-Owner/Non-Classified Worker Employee.

III. CONTRIBUTION BY EMPLOYER

The Employer agrees to timely contribute to the Funds, at such times specified in the applicable Trust or by the Trustees, at the rate(s) specified in the Applicable Collective Bargaining Agreement for hours worked by a Participant, subject to the following limits:

Principals (Owners)	28 hours per week
Non-Classified Workers	Contributions are required to be made for the same number of hours as carpenters working in the same industry, e.g. 35 or 40 hours per week

All contributions to the Funds shall be payable on a weekly basis, via remittance to ADP.

IV. COLLECTION BY FUNDS

The Employer agrees to timely contribute to the Funds and to be bound by all the terms and conditions of the Statement of Policy for Collection of Employer Contributions (the "Policy"). Pursuant to the Policy, the Employer is required, *inter alia*, to make contributions, to be subject to audit of payroll and other records, and to be liable for interest, liquidated damages, attorney's fees and costs if the Employer is delinquent in its contributions to the Funds. The Policy is hereby made part of this Agreement and shall be considered as incorporated herein. To the extent the terms and conditions of this Agreement are inconsistent with the terms and

conditions set forth in the aforementioned Policy, the terms and conditions of the Policy shall control. The Employer further agrees to provide evidence, in a form and manner requested by the Funds, that all employees on behalf of whom it makes contributions to the Funds are Principal-Owner/Non-Classified Worker Employees.

In the event this Agreement is terminated or the Trustees determine, in their sole and absolute discretion, that the Employer has withdrawn from the Pension Fund pursuant to the Pension Plan and the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Employer will be subject to the Pension Fund's and ERISA's rules regarding withdrawal liability.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Employer and the New York City District Council of Carpenters Annuity Fund, the New York City District Council of Carpenters Apprenticeship Fund, the New York City District Council of Carpenters Pension Fund, the New York City District Council of Carpenters Welfare Fund, the New York City District Council of Carpenters Vacation Benefit and the New York City District Council of Carpenters Labor Management Corporation have executed this Agreement as of the date set forth below.

THREE GUYS FLR COVG WKRM INC

By: _____
Name: _____
Title: _____

Date

NEW YORK CITY DISTRICT
COUNCIL OF CARPENTERS
ANNUITY FUND

By: _____
Name: _____
Title: _____

Date

By: _____
Name: _____
Title: _____

Date

NEW YORK CITY DISTRICT
COUNCIL OF CARPENTERS
APPRENTICESHIP FUND

By: _____
Name: _____
Title: _____

Date

By: _____
Name: _____
Title: _____

Date

NEW YORK CITY DISTRICT
COUNCIL OF CARPENTERS
PENSION FUND

By: _____
Name: _____
Title: _____

Date

By: _____
Name: _____
Title: _____

Date

NEW YORK DISTRICT COUNCIL OF CARPENTERS

UNION TRUSTEES

Michael J. Forde
Chairman
Peter Thomassen
Denis Sheil
Lawrence D'Errico
John E. Greaney
Charles Harkin

BENEFIT FUNDS

Stuart R. GraBois
Executive Director

395 Hudson Street
New York, N.Y. 10014
Telephone: (212) 366-7300
Fax: (212) 366-7444

MANAGEMENT TRUSTEES

Paul O'Brien
Co-Chairman
George Greco
Richard Harding
David T. Meberg
Kevin M. O'Callaghan
Joseph Olivieri

TO: Contributing Employers to the
Carpenters Benefit Funds

DATE: August 24, 2006

FROM: Board of Trustees

SUBJECT: Benefit Contributions for Principals and Non Classified Workers

The Funds' policy regarding benefit contributions for Principals (owners) and non-classified workers as determined by the Board of Trustees, effective September 1, 2006 is as follows:

1. Effective September 1, 2006, with respect to principals (owners) who have executed a Member Employer participation agreement with the Funds, the minimum required contribution is twenty-eight (28) hours per week.
2. Effective September 1, 2006, contractors wishing to purchase full benefits for their non-classified workers, including superintendents, project managers, estimators, etc. who are union carpenters, are required to make contributions for the same number of hours as carpenters in the same industry, e.g., 35 or 40 hours per week.

There are no exceptions to these rules and the Funds will have no alternative other than to seek interest and damages if full payments are not timely made.

ADDENDUM TO COLLECTIVE BARGAINING AGREEMENT

DATED MARCH 10 1993 BETWEEN THE NEW YORK CITY DISTRICT COUNCIL
OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND.....
NAME OF FIRM THREE GUYS FLOOR COVERING WORKROOM INC.

ADDRESS 271 40TH STREET BROOKLYN NY 11232

SALVATORE PICCARILLO and the above-named
member-employer

Corporation hereby represent that SALVATORE PICCARILLO is a (shareholder and/or
officer or director) of the Corporation and intends to perform regular work as an
"employee", which is within the Jurisdiction of the Union as set forth in the
Collective Bargaining Agreement.

SALVATORE PICCARILLO and the Corporation consent and agree
that in order to substantiate that SALVATORE PICCARILLO is an
"employee" within the terms of the Collective Bargaining Agreement and thereby
eligible to qualify as an "employee" with the New York City District Council of
Carpenters' Fringe Benefit Funds, the Corporation shall report and pay weekly
contributions on his behalf to the Fringe Benefit Funds in a minimum amount
representing contributions for twenty-eight (28) hours work (Building Construction)
thirty-two (32) hours work (shop) or 32 hours work (Heavy Construction). In the
event that SALVATORE PICCARILLO works in excess of the minimum
hours per week as an "employee", contributions shall be paid for all additional
hours worked in accordance with the Collective Bargaining Agreement.

In the event that the Corporation fails to pay weekly contributions
for at least twenty-eight (28) hours work per week (Building Construction),
thirty-two (32) hours work per week (shop) or thirty-two (32) hours per week
(Heavy Construction) it is consented and agreed that SALVATORE PICCARILLO
shall be deemed outside that Collective Bargaining Agreement and not entitled
to any benefits from the New York City District Council of Carpenters Fringe
Benefit Funds.

The above Addendum is subject to the Constitution and Laws
of the United Brotherhood of Carpenters and Joiners of America, Section 44, Article
J, must be fully complied with.

119-46-8932
Social Security Number

THREE GUYS FLOOR COVERING WORKROOM INC.

Name of Firm

X [Signature]
Principal (Title)

X SALVATORE PICCARILLO
Member-Employer

ADDENDUM TO COLLECTIVE BARGAINING AGREEMENT

DATED MARCH 10 1993 BETWEEN THE NEW YORK CITY DISTRICT COUNCIL
OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND.....
NAME OF FIRM THREE GUYS FLOOR COVERING WORKROOM INC.
ADDRESS 271 40 th Street Brooklyn N.Y. 11232

Robert Gonzalez and the above-named
member-employer

Corporation hereby represent that Robert Gonzalez is a (shareholder and/or
officer or director) of the Corporation and intends to perform regular work as an
"employee", which is within the Jurisdiction of the Union as set forth in the
Collective Bargaining Agreement.

Robert Gonzalez and the Corporation consent and agree
that in order to substantiate that Robert Gonzalez is an
"employee" within the terms of the Collective Bargaining Agreement and thereby
eligible to qualify as an "employee" with the New York City District Council of
Carpenters' Fringe Benefit Funds, the Corporation shall report and pay weekly
contributions on his behalf to the Fringe Benefit Funds in a minimum amount
representing contributions for twenty-eight (28) hours work (Building Construction)
thirty-two (32) hours work (shop) or 32 hours work (Heavy Construction). In the
event that Robert Gonzalez works in excess of the minimum
hours per week as an "employee", contributions shall be paid for all additional
hours worked in accordance with the Collective Bargaining Agreement.

In the event that the Corporation fails to pay weekly contributions
for at least twenty-eight (28) hours work per week (Building Construction),
thirty-two (32) hours work per week (shop) or thirty-two (32) hours per week
(Heavy Construction) it is consented and agreed that Robert Gonzalez
shall be deemed outside that Collective Bargaining Agreement and not entitled
to any benefits from the New York City District Council of Carpenters Fringe
Benefit Funds.

The above Addendum is subject to the Constitution and Laws
of the United Brotherhood of Carpenters and Joiners of America, Section 44, Article
J, must be fully complied with.

102-62-9814
Social Security Number

Three guys Floor Covering Workroom Inc
Name of Firm

X Robert Gonzalez Vice Pres. Sec.
Principal (Title)

X Robert Gonzalez
Member-Employee

NEW YORK DISTRICT COUNCIL OF CARPENTERS

UNION TRUSTEES

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George Greco
Richard Harding
David T. Meberg
Kevin M. O'Callaghan
Joseph Olivieri

TO: Contributing Employers to the
Carpenters Benefit Funds

DATE: August 24, 2006

FROM: Board of Trustees

SUBJECT: Benefit Contributions for Principals and Non Classified Workers

The Funds' policy regarding benefit contributions for Principals (owners) and non-classified workers as determined by the Board of Trustees, effective September 1, 2006 is as follows:

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There are no exceptions to these rules and the Funds will have no alternative other than to seek interest and damages if full payments are not timely made.

NEW YORK DISTRICT COUNCIL OF CARPENTERS

UNION TRUSTEES

Michael J. Forde
Chairman
Peter Thomassen
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Lawrence D'Errico
John E. Greaney
Charles Harkin

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Joseph Olivieri

TO: Contributing Employers to the
Carpenters Benefit Funds

DATE: August 06, 2007

FROM: Board of Trustees

SUBJECT: Benefit Contributions for Union Members who are Principals and/or Non-Classified Workers

This letter is to serve as a follow-up to the letter mailed August 24, 2006.

The Funds' policy regarding benefit contributions for principals (owners) and non-classified workers (including superintendents, project managers, estimators etc.) as determined by the Board of Trustees, effective September 1, 2006 is as follows:

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There are no exceptions to these rules and the Funds will have no alternative other than to seek interest and damages if full payments are not timely made.

NEW YORK DISTRICT COUNCIL OF CARPENTERS

UNION TRUSTEES

Michael J. Forde
Chairman
Peter Thomassen
Gene Maiello
Denis Shul
Lawrence D'Errico
Christopher Wallace

BENEFIT FUNDS

Stuart R. GraBois
Executive Director

395 Hudson Street
New York, N.Y. 10014
Telephone: (212) 366-7300
Fax: (212) 366-7444

MANAGEMENT TRUSTEES

Paul O'Brien
Co-Chairman
George Greco
Richard Harding
Michael Mazzucca
David Meberg
Joseph Olivieri

January 23, 2002

Three Guys Floor Covering Workroom, Inc.
545 Eighth Avenue
New York, NY 10018

RE: Audit Period 01/01/00 - 06/30/01

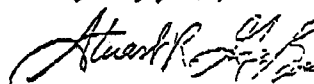
Gentlemen:

An audit of the books and records of your company for the above audit period has been conducted by Abrams, Herde & Merkel LLP for the New York District Council Carpenters Benefit Funds.

Based upon this examination and the supporting documentation available to this office, we have determined that no additional monies are due the Funds for this audit period.

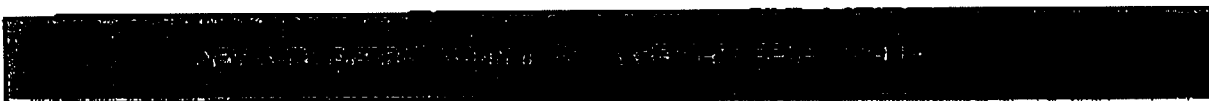
Thank you for your cooperation in this matter.

Very truly yours,



Stuart R. GraBois
Executive Director

cc: J. Cerami
R. Shaw
R. Neidig



Employer	<u>Three Guys Floor Covering Workroom, Inc.</u>		
Address	<u>545 Eighth Avenue, New York, NY 10018</u>		
Mail Recap To	<u>545 Eighth Avenue, New York, NY 10018</u>		
Telephone #	<u>212-244-0444</u>	Fax #	<u>—</u>
Contact	<u>Robert Gonzales</u>	Position	<u>Vice President</u>
Principal(s)	<u>Salvatore Picarillo</u>	Position	<u>President</u>
Audit Period	<u>1/1/2000</u>	TO	<u>6/30/2001</u>
		Acct(s)	<u>1/P-14680</u>

Agreement	Period(s)
<u>Independent Outside</u>	<u>7/1/1996 To 6/30/2001</u>
<u>Independent Resilient Floor</u>	<u>7/1/1996 To 6/30/2001</u>
<u>—</u>	<u>— To —</u>
Surety information	Effective Expiration
<u>\$5,000 CD</u>	<u>— To —</u>
<u>—</u>	<u>— To —</u>



Principal	<u>\$0.00</u>	<u>—</u>
10% Del Assessment	<u>-</u>	<u>—</u>
Interest	<u>-</u>	Amount Due <u>\$ 0.00</u>
Current Audit Deficiency	<u>\$0.00</u>	
Current Audit Payments	<u>-</u>	Current Audit Payments <u>-</u>
Balance Due-Current Audit	<u>\$0.00</u>	Balance Due-Current Audit <u>\$0.00</u>
Prior Audit Balance	<u>-</u>	Prior Audit Balance <u>-</u>
Subsequent Audit Balance	<u>-</u>	Subsequent Audit Balance <u>-</u>
Total Due	<u>\$0.00</u>	Total Due <u>\$ 0.00</u>

No Findings

1/22/2002

Analysis of Findings

Employer: Three Guys Floor Covering Works, Inc
Audit Period: 11/2009 TO 6/30/2011
Account # 1P-14880

1JP-1468D

Contract Type	Benefit Rate	Interest Rate	Benefit Period
---------------	--------------	---------------	----------------

No Findings

Current Assets
in Dollars

3

[illegible]

#DAILY

Adj Principal -1. AIC Money

401 Principles

10% Del. Assessment

13410147

Total Data

No Findings

\$0.00	
\$0.00	
\$0.00	
\$0.00	
\$0.00	
\$0.00	

17727802

Audited Hours Reconciled to Benefits Purchased

Employer's Name **Three Guys Floor Covering Workroom, Inc.**
 Account # **1/P-14680**

Stamp Year	Account Number	Hours Audited	Total Stamps Purchased	Less Stamps Returned	Less Stamps Submitted For Refund	Less Stamp Inventory	Net Stamps Distributed	Direct Payments (in hours)	Total Hours Purchased	Difference	Rate Per Hour	Total Due Funds
1/1/2000	1-14680	2294.00	1762.00	0.00	0.00	0.00	1762.00	532.00	2294.00	0.00	\$21.81	\$0.00
7/1/2000	1-14680	2643.00	2601.00	0.00	0.00	0.00	2601.00	42.00	2643.00	0.00	\$22.97	\$0.00
1/1/2001	1-14680	3564.00	3378.00	0.00	0.00	0.00	3378.00	186.00	3564.00	0.00	\$22.97	\$0.00
Total												\$0.00

Company		Three Guys Floor Covering Workroom Inc.		Journepmen																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																
Account#		1/P-14440																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																		
Period		01/2004 to 06/30/2006																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																		
Last Name	Initial	Boe	Boe Num	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466	467	468	469	470	471	472	473	474	475	476	477	478	479	480	481	482	483	484	485	486	487	488	489	490	491	492	493	494	495	496	497	498	499	500	501	502	503	504	505	506	507	508	509	510	511	512	513	514	515	516	517	518	519	520	521	522	523	524	525	526	527	528	529	530	531	532	533	534	535	536	537	538	539	540	541	542	543	544	545	546	547	548	549	550	551	552	553	554	555	556	557	558	559	560	561	562	563	564	565	566	567	568	569	570	571	572	573	574	575	576	577	578	579	580	581	582	583	584	585	586	587	588	589	590	591	592	593	594	595	596	597	598	599	600	601	602	603	604	605	606	607	608	609	610	611	612	613	614	615	616	617	618	619	620	621	622	623	624	625	626	627	628	629	630	631	632	633	634	635	636	637	638	639	640	641	642	643	644	645	646	647	648	649	650	651	652	653	654	655	656	657	658	659	660	661	662	663	664	665	666	667	668	669	670	671	672	673	674	675	676	677	678	679	680	681	682	683	684	685	686	687	688	689	690	691	692	693	694	695	696	697	698	699	700	701	702	703	704	705	706	707	708	709	710	711	712	713	714	715	716	717	718	719	720	721	722	723	724	725	726	727	728	729	730	731	732	733	734	735	736	737	738	739	740	741	742	743	744	745	746	747	748	749	750	751	752	753	754	755	756	757	758	759	760	761	762	763	764	765	766	767	768	769	770	771	772	773	774	775	776	777	778	779	780	781	782	783	784	785	786	787	788	789	790	791	792	793	794	795	796	797	798	799	800	801	802	803	804	805	806	807	808	809	810	811	812	813	814	815	816	817	818	819	820	821	822	823	824	825	826	827	828	829	830	831	832	833	834	835	836	837	838	839	840	841	842	843	844	845	846	847	848	849	850	851	852	853	854	855	856	857	858	859	860	861	862	863	864	865	866	867	868	869	870	871	872	873	874	875	876	877	878	879	880	881	882	883	884	885	886	887	888	889	890	891	892	893	894	895	896	897	898	899	900	901	902	903	904	905	906	907	908	909	910	911	912	913	914	915	916	917	918	919	920	921	922	923	924	925	926	927	928	929	930	931	932	933	934	935	936	937	938	939	940	941	942	943	944	945	946	947	948	949	950	951	952	953	954	955	956	957	958	959	960	961	962	963	964	965	966	967	968	969	970	971	972	973	974	975	976	977	978	979	980	981	982	983	984	985	986	987	988	989	990	991	992	993	994	995	996	997	998	999	1000	1001	1002	1003	1004	1005	1006	1007	1008	1009	1010	1011	1012	1013	1014	1015	1016	1017	1018	1019	1020	1021	1022	1023	1024	1025	1026	1027	1028	1029	1030	1031	1032	1033	1034	1035	1036	1037	1038	1039	1040	1041	1042	1043	1044	1045	1046	1047	1048	1049	1050	1051	1052	1053	1054	1055	1056	1057	1058	1059	1060	1061	1062	1063	1064	1065	1066	1067	1068	1069	1070	1071	1072	1073	1074	1075	1076	1077	1078	1079	1080	1081	1082	1083	1084	1085	1086	1087	1088	1089	1090	1091	1092	1093	1094	1095	1096	1097	1098	1099	1100	1101	1102	1103	1104	1105	1106	1107	1108	1109	1110	1111	1112	1113	1114	1115	1116	1117	1118	1119	1120	1121	1122	1123	1124	1125	1126	1127	1128	1129	1130	1131	1132	1133	1134	1135	1136	1137	1138	1139	1140	1141	1142	1143	1144	1145	1146	1147	1148	1149	1150	1151	1152	1153	1154	1155	1156	1157	1158	1159	1160	1161	1162	1163	1164	1165	1166	1167	1168	1169	1170	1171	1172	1173	1174	1175	1176	1177	1178	1179	1180	1181	1182	1183	1184	1185	1186	1187	1188	1189	1190	1191	1192	1193	1194	1195	1196	1197	1198	1199	1200	1201	1202	1203	1204	1205	1206	1207	1208	1209	1210	1211	1212	1213	1214	1215	1216	1217	1218	1219	1220	1221	1222	1223	1224	1225	1226	1227	1228	1229	1230	1231	1232	1233	1234	1235	1236	1237	1238	1239	1240	1241	1242	1243	1244	1245	1246	1247	1248	1249	1250	1251	1252	1253	1254	1255	1256	1257	1258	1259	1260	1261	1262	1263	1264	1265	1266	1267	1268	1269	1270	1271	1272	1273	1274	1275	1276	1277	1278	1279	1280	1281	1282	1283	1284	1285	1286	1287	1288	1289	1290	1291	1292	1293	1294	1295	1296	1297	1298	1299	1300	1301	1302	1303	1304	1305	1306	1307	1308	1309	1310	1311	1312	1313	1314	1315	1316	1317	1318	1319	1320	1321	1322	1323	1324	1325	1326	1327	1328	1329	1330	1331	1332	1333	1334	1335	1336	1337	1338	1339	1340	1341	1342	1343	1344	1345	1346	1347	1348	1349	1350	1351	1352	1353	1354	1355	1356	1357	1358	1359	1360	1361	1362	1363	1364	1365	1366	1367	1368	1369	1370	1371	1372	1373	1374	1375	1376	1377	1378	1379	1380	1381	1382	1383	1384	1385	1386	1387	1388	1389	1390	1391	1392	1393	1394	1395	1396	1397	1398	1399	1400	1401	1402	1403	1404	1405	1406	1407	1408	1409	1410	1411	1412	1413	1414	1415	1416	1417	1418	1419	1420	1421	1422	1423	1424	1425	1426	1427	1428	1429	1430	1431	1432	1433	1434	1435	1436	1437	1438	1439	1440	1441	1442	1443	1444	1445	1446	1447	1448	1449	1450	1451	1452	1453	1454	1455	1456	1457	1458	1459	1460	1461	1462	1463	1464	1465	1466	1467	1468	1469	1470	1471	1472	1473	1474	1475	1476	1477	1478	1479	1480	1481	1482	1483	1484	1485	1486	1487	1488	1489	1490	1491	1492	1493	1494	1495	1496	1497	1498	1499	1500	1501	1502	1503	1504	1505	1506	1507	1508	1509	1510	1511	1512	1513	1514	1515	1516	1517	1518	1519	1520	1521	1522	1523	1524	1525	1526	1527	1528	1529	1530	1531	1532	1533	1534	1535	1536	1537	1538	1539	1540	1541	1542	1543	1544	1545	1546	1547	1548	1549	1550	1551	1552	1553	1554	1555	1556	1557	1558	1559	1560	1561	1562	1563	1564	1565	1566	1567	1568	1569	1570	1571	1572	1573	1574

Complaint		Three Guys Floor Covering Workman Inc.		Journeyman																										
Account#		11P-14830																												
Period		07/01/2000 to 12/31/2000																												
Last Name	Initial	See Sec Num	7/6	7/13	7/20	7/27	8/3	8/10	8/17	8/24	8/31	9/7	9/14	9/21	9/28	10/5	10/12	10/19	10/26	11/2	11/9	11/16	11/23	11/30	12/7	12/14	12/21	12/28	12/30	Total
Baker	G	002-84-0103		21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	604.0
Chase	R	001-40-2041		28	28	28	28	28	28	28	28	28	28	28	28	28	28	28	28	28	28	28	28	28	28	28	28	28	28	604.0
Cibulko	M	008-60-3477		14	14											21	21	21	21	21	21	21	21	21	21	21	21	21	210.0	
Coleman	C	104-85-3040																			14	14	14	14	14	14	14	14	210.0	
Dawson	J	076-62-7055	21																											112.0
Kanino	C	102-40-2102	21	18	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	604.0	
Melchior	A	054-82-0701		21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	604.0
Papandrew	R	076-62-0701		14	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	604.0
Peters	W	076-62-0701		21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	604.0
Rodriguez	E	101-68-5773		21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	21	604.0
Total Hours Audited:			42	128	182	197	103	88	94	130	135	97	112	91	98	118	128	63	106	106	86	70	84	88	97	88	88	42	0	2843.0

[illegible]

NO WORK REPORTED DURING THIS PERIOD

Company Account# Period		Three Guys Floor Covering Workunit Inc. 11P-14880 01/01/2001 TO 06/30/2001		Apprentices																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																													
Last Name	Initial	Box	Sec	Num	17	17B	17C	17D	17E	17F	17G	17H	17I	17J	17K	17L	17M	17N	17O	17P	17Q	17R	17S	17T	17U	17V	17W	17X	17Y	17Z	17AA	17AB	17AC	17AD	17AE	17AF	17AG	17AH	17AI	17AJ	17AK	17AL	17AM	17AN	17AO	17AP	17AQ	17AR	17AS	17AT	17AU	17AV	17AW	17AX	17AY	17AZ	17BA	17BB	17BC	17BD	17BE	17BF	17BG	17BH	17BI	17BJ	17BK	17BL	17BM	17BN	17BO	17BP	17BQ	17BR	17BS	17BT	17BU	17BV	17BW	17BX	17BY	17BZ	17CA	17CB	17CC	17CD	17CE	17CF	17CG	17CH	17CI	17CJ	17CK	17CL	17CM	17CN	17CO	17CP	17CQ	17CR	17CS	17CT	17CU	17CV	17CW	17CX	17CY	17CZ	17DA	17DB	17DC	17DD	17DE	17DF	17DG	17DH	17DI	17DJ	17DK	17DL	17DM	17DN	17DO	17DP	17DQ	17DR	17DS	17DT	17DU	17DV	17DW	17DX	17DY	17DZ	17EA	17EB	17EC	17ED	17EE	17EF	17EG	17EH	17EI	17EJ	17EK	17EL	17EM	17EN	17EO	17EP	17EQ	17ER	17ES	17ET	17EU	17EV	17EW	17EX	17EY	17EZ	17FA	17FB	17FC	17FD	17FE	17FF	17FG	17FH	17FI	17FJ	17FK	17FL	17FM	17FN	17FO	17FP	17FQ	17FR	17FS	17FT	17FU	17FV	17FW	17FX	17FY	17FZ	17GA	17GB	17GC	17GD	17GE	17GF	17GG	17GH	17GI	17GJ	17GK	17GL	17GM	17GN	17GO	17GP	17GQ	17GR	17GS	17GT	17GU	17GV	17GW	17GX	17GY	17GZ	17HA	17HB	17HC	17HD	17HE	17HF	17HG	17HH	17HI	17HJ	17HK	17HL	17HM	17HN	17HO	17HP	17HQ	17HR	17HS	17HT	17HU	17HV	17HW	17HX	17HY	17HZ	17IA	17IB	17IC	17ID	17IE	17IF	17IG	17IH	17II	17IJ	17IK	17IL	17IM	17IN	17IO	17IP	17IQ	17IR	17IS	17IT	17IU	17IV	17IW	17IX	17IY	17IZ	17JA	17JB	17JC	17JD	17JE	17JF	17JG	17JH	17JI	17JJ	17JK	17JL	17JM	17JN	17JO	17JP	17JQ	17JR	17JS	17JT	17JU	17JV	17JW	17JX	17JY	17JZ	17KA	17KB	17KC	17KD	17KE	17KF	17KG	17KH	17KI	17KJ	17KK	17KL	17KM	17KN	17KO	17KP	17KQ	17KR	17KS	17KT	17KU	17KV	17KW	17KX	17KY	17KZ	17LA	17LB	17LC	17LD	17LE	17LF	17LG	17LH	17LI	17LJ	17LK	17LM	17LN	17LO	17LP	17LQ	17LR	17LS	17LT	17LU	17LV	17LW	17LX	17LY	17LZ	17MA	17MB	17MC	17MD	17ME	17MF	17MG	17MH	17MI	17MJ	17MK	17ML	17MM	17MN	17MO	17MP	17MQ	17MR	17MS	17MT	17MU	17MV	17MW	17MX	17MY	17MZ	17NA	17NB	17NC	17ND	17NE	17NF	17NG	17NH	17NI	17NJ	17NK	17NL	17NM	17NN	17NO	17NP	17NQ	17NR	17NS	17NT	17NU	17NV	17NW	17NX	17NY	17NZ	17OA	17OB	17OC	17OD	17OE	17OF	17OG	17OH	17OI	17OJ	17OK	17OL	17OM	17ON	17OO	17OP	17OQ	17OR	17OS	17OT	17OU	17OV	17OW	17OX	17OY	17OZ	17PA	17PB	17PC	17PD	17PE	17PF	17PG	17PH	17PI	17PJ	17PK	17PL	17PM	17PN	17PO	17PP	17PQ	17PR	17PS	17PT	17PU	17PV	17PW	17PX	17PY	17PZ	17QA	17QB	17QC	17QD	17QE	17QF	17QG	17QH	17QI	17QJ	17QK	17QL	17QM	17QN	17QO	17QP	17QQ	17QR	17QS	17QT	17QU	17QV	17QW	17QX	17QY	17QZ	17RA	17RB	17RC	17RD	17RE	17RF	17RG	17RH	17RI	17RJ	17RK	17RL	17RM	17RN	17RO	17RP	17RQ	17RR	17RS	17RT	17RU	17RV	17RW	17RX	17RY	17RZ	17SA	17SB	17SC	17SD	17SE	17SF	17SG	17SH	17SI	17SJ	17SK	17SL	17SM	17SN	17SO	17SP	17SQ	17SR	17SS	17ST	17SU	17SV	17SW	17SX	17SY	17SZ	17TA	17TB	17TC	17TD	17TE	17TF	17TG	17TH	17TI	17TJ	17TK	17TL	17TM	17TN	17TO	17TP	17TQ	17TR	17TS	17TT	17TU	17TV	17TW	17TX	17TY	17TZ	17UA	17UB	17UC	17UD	17UE	17UF	17UG	17UH	17UI	17UJ	17UK	17UL	17UM	17UN	17UO	17UP	17UQ	17UR	17US	17UT	17UU	17UV	17UW	17UX	17UY	17UZ	17VA	17VB	17VC	17VD	17VE	17VF	17VG	17VH	17VI	17VJ	17VK	17VL	17VM	17VN	17VO	17VP	17VQ	17VR	17VS	17VT	17VU	17VV	17VW	17VX	17VY	17VZ	17WA	17WB	17WC	17WD	17WE	17WF	17WG	17WH	17WI	17WJ	17WK	17WL	17WM	17WN	17WO	17WP	17WQ	17WR	17WS	17WT	17WU	17WV	17WW	17WX	17WY	17WZ	17XA	17XB	17XC	17XD	17XE	17XF	17XG	17XH	17XI	17XJ	17XK	17XL	17XM	17XN	17XO	17XP	17XQ	17XR	17XS	17XT	17XU	17XV	17XW	17XX	17XY	17XZ	17YA	17YB	17YC	17YD	17YE	17YF	17YG	17YH	17YI	17YJ	17YK	17YL	17YM	17YN	17YO	17YP	17YQ	17YR	17YS	17YT	17YU	17YV	17YW	17YX	17YY	17YZ	17ZA	17ZB	17ZC	17ZD	17ZE	17ZF	17ZG	17ZH	17ZI	17ZJ	17ZK	17ZL	17ZM	17ZN	17ZO	17ZP	17ZQ	17ZR	17ZS	17ZT	17ZU	17ZV	17ZW	17ZX	17ZY	17ZZ																
Total:					0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

NO WORK REPORTED DURING THIS PERIOD

NEW YORK DISTRICT COUNCIL OF CARPENTERS

UNION TRUSTEES

Michael J. Forde
Chairman
Peter Thomassen
Denis Sheil III
Lawrence D'Errico
Christopher Wallace
Vincent Alongi

Three Guys Floor Covering Workroom Inc.
545 Eight Avenue, 8th Floor
New York, NY, 10018

BENEFIT FUNDS

Stuart R. GraBois
Executive Director

395 Hudson Street
New York, N.Y. 10014
Telephone: (212) 366-7300
Fax: (212) 366-7444

April 30, 2003

MANAGEMENT TRUSTEES

Joseph Olivieri
Co-Chairman
George Greco
Richard Harding
Michael Mazzucca
David Meberg
Paul O'Brien

RE: Delinquency in Fringe Benefit Contributions for the period of 7/1/2001 to 06/30/2002

Dear Sir/Madam:

Enclosed are the results of the audit of the books and records of the above named company for the period indicated as performed by Abrams, Herde and Merkel, CPAs for the New York District Council of Carpenters Benefit Funds ("Funds"). The enclosed audit report indicates a delinquency in fringe benefit contributions in the amount of \$391.51. Also send a separate check for the Promo Fund, \$4.06.

IMPORTANT NOTICE: If this audit is paid within fourteen (14) days of the date of this letter, there will be no delinquency assessment charge of \$66.64. If payment is made after 14 days, kindly include the delinquency assessment of \$66.64 with your payment. Also, daily interest at 12% *per annum* will be charged and added to any amounts due.

If you agree with the findings of the enclosed audit, you must pay the delinquent fringe benefit contributions within fourteen (14) days of the date of this letter. Mail your check, made payable to "NYDCC Benefit Funds", to Abrams, Herde and Merkel, CPAs at 2001 Marcus Avenue, Suite S 90, Lake Success, NY 11042. Telephone: (516) 488-6996.

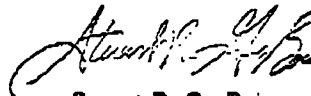
If you dispute the findings of this audit, you must respond within fourteen (14) days of the date of this letter by submitting detailed exceptions to Abrams, Herde and Merkel, CPAs at the address listed above. Your exceptions will be reviewed and a response given to you shortly thereafter. At that point, immediate payment of any delinquencies will be required.

If you do not have the ability for an immediate payment and need a payment plan, please contact Charles A. Poekel, Esq. of the Legal Department of the Funds at (212) 366-7474. Please be aware that any payment plan is strictly subject to approval by the Delinquency Committee or the Board of Trustees.

If you fail to pay the delinquent fringe benefit contributions within fourteen (14) days from the date of this letter and have not submitted your exceptions to our CPAs within that time, the Funds may institute suit in Federal Court or commence an arbitration proceeding to collect the amount due and the additional damages to which they are entitled under the Employee Retirement Income Security Act, including (i) liquidated damages, (ii) interest imposed by statute, (iii) attorney's fees, and (iv) court costs. Also, the Funds may seize without further notice to you any surety your company may have posted, in which event your company may no longer be in compliance with its existing contract.

Your prompt attention to this matter is strongly urged.

Very truly yours,



Stuart R. GraBois,
Executive Director

cc: Abrams, Herde and Merkel, CPAs
C. Poekel, Esq.

N. Sandy
R. Shaw

NEW YORK DISTRICT COUNCIL 65 - CARPENTERS BENEFIT FUND

Employer Three Guys Floor Covering Workroom Inc.
Address 545 Eighth Avenue, 8th Floor, New York, NY 10018
Mail Recap To Same as above
Telephone # 212-244-0004 **Fax #** 212-244-0005
Contact Robert Gonzalez **Position** Vice President
Principal(s) Salvatore Piccarillo **Position** President
Audit Period 7/1/2001 **TO** 6/30/2002 **Acct(s)** 8/P - 14680

Agreement **Period(s)**
Independent Resilient Floor 7/1/1996 To 06/30/2001 (w/compliance)
— — To —
— — To —
Surety Information **Effective** **Expiration**
\$5,000 CD — To —
— — To —

Three Guys Floor Covering Inc.

A.J.R.E.I. In Lieu of Flooring

Principal \$333.20
Interest 58.31
Sub Total (If paid within 14 days) \$391.51
20% Del Assessment 66.64
Total Due (If paid after 14 days) \$458.15
Prior Audit Balance -
Subsequent Audit Balance -
Total Due - All Outstanding Audits \$458.15

A.J.R.E.I. In Lieu of Flooring
Balance Due-Current Audit \$ 4.06
Prior Audit Balance -
Subsequent Audit Balance -
Total Due \$ 4.06

4/30/2003

W00H2002J



EMPLOYER: Three Guys Floor Covering Workroom Inc.
ACCOUNT NO: 8/P - 14680
PROMOTIONAL FUND: A.J.R.E.I. In Lieu of Flooring

PERIOD	PROMO TYPE	HOURS DUE	RATE @ HOUR	AMOUNT DUE
7/1/2001	A.J.R.E.I	14.00	\$0.29	\$4.06

SUBTOTAL	\$	4.06
ON ACCOUNT:		\$0.00
TOTAL:	\$	<u>4.06</u>

Player	Team	Pos	HT	WT	Age	Exp	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099	2100	2101	2102	2103	2104	2105	2106	2107	2108	2109	2110	2111	2112	2113	2114	2115	2116	2117	2118	2119	2120	2121	2122	2123	2124	2125	2126	2127	2128	2129	2130	2131	2132	2133	2134	2135	2136	2137	2138	2139	2140	2141	2142	2143	2144	2145	2146	2147	2148	2149	2150	2151	2152	2153	2154	2155	2156	2157	2158	2159	2160	2161	2162	2163	2164	2165	2166	2167	2168	2169	2170	2171	2172	2173	2174	2175	2176	2177	2178	2179	2180	2181	2182	2183	2184	2185	2186	2187	2188	2189	2190	2191	2192	2193	2194	2195	2196	2197	2198	2199	2200	2201	2202	2203	2204	2205	2206	2207	2208	2209	2210	2211	2212	2213	2214	2215	2216	2217	2218	2219	2220	2221	2222	2223	2224	2225	2226	2227	2228	2229	2230	2231	2232	2233	2234	2235	2236	2237	2238	2239	2240	2241	2242	2243	2244	2245	2246	2247	2248	2249	2250	2251	2252	2253	2254	2255	2256	2257	2258	2259	2260	2261	2262	2263	2264	2265	2266	2267	2268	2269	2270	2271	2272	2273	2274	2275	2276	2277	2278	2279	2280	2281	2282	2283	2284	2285	2286	2287	2288	2289	2290	2291	2292	2293	2294	2295	2296	2297	2298	2299	2300	2301	2302	2303	2304	2305	2306	2307	2308	2309	2310	2311	2312	2313	2314	2315	2316	2317	2318	2319	2320	2321	2322	2323	2324	2325	2326	2327	2328	2329	2330	2331	2332	2333	2334	2335	2336	2337	2338	2339	2340	2341	2342	2343	2344	2345	2346	2347	2348	2349	2350	2351	2352	2353	2354	2355	2356	2357	2358	2359	2360	2361	2362	2363	2364	2365	2366	2367	2368	2369	2370	2371	2372	2373	2374	2375	2376	2377	2378	2379	2380	2381	2382	2383	2384	2385	2386	2387	2388	2389	2390	2391	2392	2393	2394	2395	2396	2397	2398	2399	2400	2401	2402	2403	2404	2405	2406	2407	2408	2409	2410	2411	2412	2413	2414	2415	2416	2417	2418	2419	2420	2421	2422	2423	2424	2425	2426	2427	2428	2429	2430	2431	2432	2433	2434	2435	2436	2437	2438	2439	2440	2441	2442	2443	2444	2445	2446	2447	2448	2449	2450	2451	2452	2453	2454	2455	2456	2457	2458	2459	2460	2461	2462	2463	2464	2465	2466	2467	2468	2469	2470	2471	2472	2473	2474	2475	2476	2477	2478	2479	2480	2481	2482	2483	2484	2485	2486	2487	2488	2489	2490	2491	2492	2493	2494	2495	2496	2497	2498	2499	2500	2501	2502	2503	2504	2505	2506	2507	2508	2509	2510	2511	2512	2513	2514	2515	2516	2517	2518	2519	2520	2521	2522	2523	2524	2525	2526	2527	2528	2529	2530	2531	2532	2533	2534	2535	2536	2537	2538	2539	2540	2541	2542	2543	2544	2545	2546	2547	2548	2549	2550	2551	2552	2553	2554	2555	2556	2557	2558	2559	2560	2561	2562	2563	2564	2565	2566	2567	2568	2569	2570	2571	2572	2573	2574	2575	2576	2577	2578	2579	2580	2581	2582	2583	2584	2585	2586	2587	2588	2589	2590	2591	2592	2593	2594	2595	2596	2597	2598	2599	2600	2601	2602	2603	2604	2605	2606	2607	2608	2609	2610	2611	2612	2613	2614	2615	2616	2617	2618	2619	2620	2621	2622	2623	2624	2625	2626	2627	2628	2629	2630	2631	2632	2633	2634	2635	2636	2637	2638	2639	2640	2641	2642	2643	2644	2645	2646	2647	2648	2649	2650	2651	2652	2653	2654	2655	2656	2657	2658	2659	2660	2661	2662	2663	2664	2665	2666	2667	2668	2669	2670	2671	2672	2673	2674	2675	2676	2677	2678	2679	2680	2681	2682	2683	2684	2685	2686	2687	2688	2689	2690	2691	2692	2693	2694	2695	2696	2697	2698	2699	2700	2701	2702	2703	2704	2705	2706	2707	2708	2709	2710	2711	2712	2713	2714	2715	2716	2717	2718	2719	2720	2721	2722	2723	2724	2725	2726	2727	2728	2729	2730	2731	2732	2733	2734	2735	2736	2737	2738	2739	2740	2741	2742	2743	2744	2745	2746	2747	2748	2749	2750	2751	2752	2753	2754	2755	2756	2757	2758	2759	2760	2761	2762	2763	2764	2765	2766	2767	2768	2769	2770	2771	2772	2773	2774	2775	2776	2777	2778	2779	2780	2781	2782	2783	2784	2785	2786	2787	2788	2789	2790	2791	2792	2793	2794	2795	2796	2797	2798	2799	2800	2801	2802	2803	2804	2805	2806	2807	2808	2809	2810	2811	2812	2813	2814	2815	2816	2817	2818	2819	2820	2821	2822	2823	2824	2825	2826	2827	2828	2829	2830	2831	2832	2833	2834	2835	2836	2837	2838	2839	2840	2841	2842	2843	2844	2845	2846	2847	2848	2849	2850	2851	2852	2853	2854	2855	2856	2857	2858	2859	2860	2861	2862	2863	2864	2865	2866	2867	2868	2869	2870	2871	2872	2873	2874	2875	2876	2877	2878	2879	2880	2881	2882	2883	2884	2885	2886	2887	2888	2889	2890	2891	2892	2893	2894	2895	2896	2897	2898	2899	2900	2901	2902	2903	2904	2905	2906	2907	2908	2909	2910	2911	2912	2913	2914	2915	2916	2917	2918	2919	2920	2921	2922	2923	2924	2925	2926	2927	2928	2929	2930	2931	2932	2933	2934	2935	2936	2937	2938	2939	2940	2941	2942	2943	2944	2945	2946	2947	2948	2949	2950	2951	2952	2953	2954	2955	2956	2957	2958	2959	2960	2961	2962	2963	2964	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